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AMERICAN MEXICAN CLAIMS COMMISSION

Under the Act of Congress Approved December 18, 1942

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REPORT TO THE SECRETARY OF STATE

*With Decisions Showing the Reasons for the
Allowance or Disallowance of the Claims*



UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON : 1943

DEPARTMENT OF STATE
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REPORT
TO THE
SECRETARY OF STATE

PERSONNEL OF THE COMMISSION

Chief Clerk: Stenographic and Clerical

Members of the Commission

Edgar E. Witt, Chairman, from April 6, 1943.

Samuel M. Gold, from April 6, 1943.

Charles F. McLaughlin, from April 6, 1943.

Counsel

Guy Martin, General Counsel, from November 2, 1943.

John Maktos, General Counsel, from June 1, 1944 to October 1, 1944.

Edwin D. Dickinson, General Counsel, from May 1, 1943 to May 22, 1944.

William H. King, Assistant General Counsel, from May 1, 1943.

Attorneys

Maurice P. Shapiro, from April 6, 1943 to September 1, 1944.

William W. Tolson, from April 6, 1943.

James H. Bullock, from April 6, 1943.

Joshua Epstein, from April 6, 1943.

Barton A. H. Thompson, from April 6, 1943.

Secretary and Assistant Secretary, from April 6, 1943.

Administrative Assistant, from April 6, 1943.

REPORT OF THE AMERICAN MEXICAN CLAIMS COMMISSION

April 4, 1947.

*The Honorable
The Secretary of State.*

SIR:

The American Mexican Claims Commission, established by the Act of Congress approved December 18, 1942 (56 Stat. 1058), has the honor to report the completion of its work. There have been separately transmitted to you, pursuant to the provisions of Section 5 of the Act, the following documents:

- (a) A list of all claims disallowed;¹
- (b) A list of all claims allowed, in whole or in part (together with the amount of each claim and the amount awarded thereon) which have not been previously certified under Section 4 (b) or 4 (c) ¹ and
- (c) A copy of the decision rendered in each case.

The lists of claims are arranged in the order of their docket numbers in the General Claims Commission, the Agrarian Claims Commission and the American Mexican Claims Commission, respectively.

There are transmitted herewith, for printing in connection with the decisions of the Commission:

- (d) A copy of the Act approved December 18, 1942, and amendments (2);
- (e) A copy of the Rules and Regulations adopted by the Commission on May 18, 1943;
- (f) A copy of the Convention of September 8, 1923, between the United States and Mexico;
- (g) A copy of the Convention of September 10, 1923, between the United States and Mexico;
- (h) A copy of the Protocol of April 24, 1934, between the United States and Mexico;
- (i) A copy of the exchange of notes signed November 9-12, 1938, between the United States and Mexico;
- (j) A copy of the Convention of November 19, 1941, between the United States and Mexico;
- (k) A copy of the General Memorandum Opinion of the

¹Not printed.

PERSONNEL OF THE COMMISSION

(Except Stenographic and Clerical)

Members of the Commission:

Edgar E. Witt, *Chairman*, from April 5, 1943.

Samuel M. Gold, from April 5, 1943.

Charles F. McLaughlin, from April 5, 1943.

Counsel:

Guy Martin, *General Counsel*, from November 2, 1945.

John Maktos, *General Counsel*, from June 1, 1944 to October 5, 1945.

Edwin D. Dickinson, *General Counsel*, from May 1, 1943 to May 22, 1944.

William H. King, *Associate Counsel*, from May 1, 1943.

Attorneys:

Maurice P. Shaner, from April 13, 1943 to September 1, 1945.

William W. Johnson, from May 1, 1943.

James H. Falloon, from May 17, 1943.

Joshua Egelson, from July 6, 1943.

Burton A. H. Blumenthal, from June 1, 1943.

Secretary and Attorney: James A. Langston, from April 6, 1943.

Administrative Assistant: Lora Power, from April 6, 1943.

REPORT OF THE AMERICAN MEXICAN CLAIMS COMMISSION

April 4, 1947.

The Honorable

The Secretary of State.

SIR:

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- (g) A copy of the Convention of September 10, 1923, between the United States and Mexico;
- (h) A copy of the Protocol of April 24, 1934, between the United States and Mexico;
- (i) A copy of the exchange of notes signed November 9-12, 1938, between the United States and Mexico;
- (j) A copy of the Convention of November 19, 1941, between the United States and Mexico;
- (k) A copy of the General Memorandum Opinion of the

¹ Not printed.

Commission on Texas Cattle Claims dated December 30, 1944;

- (l) A list of the personnel of the Commission;
- (m) A brief historical background of the claims before this Commission.

This Commission has considered a total of 1,255 dockets covering 1,397 cases in which the amount claimed was \$351,250,-960.17. It passed upon 355 petitions for review, granting 247 petitions and denying 108. The total amount of the awards which have been certified to the Treasury by this Commission is \$37,948,200.05. In addition, the sum of \$2,800,627.18 was awarded in claims wherein the American and Mexican members of previous Commissions agreed as to the amounts. The Secretary of the Treasury was directed to pay those awards under the provisions of the Settlement of Mexican Claims Act of 1942. Both of the aforesaid categories of awards total \$40,748,827.23 and thus slightly exceed the total amount of the en bloc settlement. The awards will accordingly be reduced pro rata as required by the said Act so that claimants will receive approximately 99.47% of the principal amounts thereof. While the Act authorizes allowance of interest on awards, it further provides that no interest shall be paid before the payment of the principal amounts of all awards. It is therefore obvious that no funds will be available for the payment of any interest.

In concluding this report the Commission desires to express its great appreciation for the cooperation which has been accorded to it by various branches of the Government and particularly by the Department of State.

Respectfully submitted:

EDGAR E. WITT, *Chairman*

SAMUEL M. GOLD, *Commissioner*

CHARLES F. McLAUGHLIN, *Commissioner*

RELEVANT DOCUMENTS

ACT OF CONGRESS, APPROVED DECEMBER 18, 1942¹

AN ACT

To provide for the settlement of certain claims of the Government of the United States on behalf of American nationals against the Government of Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Settlement of Mexican Claims Act of 1942."

SEC. 2. (a) There is hereby established a commission to be known as the American Mexican Claims Commission (hereinafter referred to as the "Commission") and to be composed of three persons to be appointed by the President, by and with the advice and consent of the Senate. Each member of the Commission shall receive a salary at the rate of \$10,000 a year. One of such members shall be designated by the President as Chairman of the Commission. Two members of the Commission shall constitute a quorum for the transaction of business. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of an original appointment.

(b) The Commission may, without regard to the civil-service laws, employ a secretary, and such legal, clerical, and technical assistants as may be necessary to carry out its functions under this Act, and shall fix their compensation without regard to the Classification Act of 1923, as amended.

(c) The Commission is authorized to make such rules and regulations as may be necessary to carry out its functions under this Act.

(d) The authority of the Commission under this Act, and the terms of office of its members, shall terminate at the expiration of two years after the date on which a majority of its members first appointed take office, but the President may by Executive order fix an earlier termination date. Upon the termination of the authority of the Commission, all books, records, documents, and other papers in the possession of the Commission shall be deposited with the Department of State.

SEC. 3. (a) The Commission shall have authority to examine and render final decisions in the following categories of claims on behalf of American nationals against the Government of Mexico—

(1) Agrarian claims which arose between January 1, 1927, and August 30, 1927, inclusive, and which were not filed with the General Claims Commission established pursuant to the Convention between the United States and Mexico signed September 8, 1923 (43 Stat. 1730);

(2) Agrarian claims which are predicated upon provisional expropriation decrees signed between August 31, 1927, and December 1, 1938, inclusive, but not published prior to December 1, 1938, and which were not filed with the Agrarian Claims Commission established pursuant to the agreement between the United States and Mexico effected by exchange of notes signed on

¹Public Law 814, 77th Cong., 2d sess.; 56 Stat. 1058.

November 9 and November 12, 1938, respectively (hereinafter referred to as the Agrarian Claims Agreement of 1938) :

(3) Agrarian claims which arose between December 1, 1938, and October 6, 1940, inclusive, and which were not filed with the Agrarian Claims Commission on or before July 31, 1939;

(4) All other claims which arose between January 1, 1927, and October 6, 1940, inclusive, and which involve international responsibility of the Government of Mexico as a consequence of damage to, or loss or destruction of, or wrongful interference with, property of American nationals; except (A) claims predicated upon acts of Mexican authorities in relation to petroleum properties; and (B) claims which were not filed with the General Claims Commission prior to August 31, 1927, and which are predicated upon default of payment of the principal or interest on bonds issued or guaranteed by the Government of Mexico;

(5) Claims or parts of claims which were filed with the General Claims Commission, and also with the Special Claims Commission, established pursuant to the Convention between the United States and Mexico signed September 10, 1923 (43 Stat. 1722), and with respect to which no final determination on the merits has been made; and

(6) Any claim in which a decision was not rendered by the General Claims Commission in conformity with the rules of procedure adopted by such Commission.

(b) All claims in the categories specified in subsection (a) may be presented for any losses or damages suffered by American nationals by reason of losses or damages suffered by any foreign corporation, company, association, or partnership in which such nationals have, or have had, a substantial and bona fide interest: *Provided*, That in all such cases the claimant shall present to the Commission either an allotment to him by the corporation, company, association, or partnership of his proportionate share of the loss or damage suffered, or other evidence thereof which is satisfactory to the Commission.

(c) All decisions by the Commission with respect to the claims in the categories specified in subsection (a) shall be based upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of such independent investigation with respect to such claims as the Commission may deem it advisable to make; except that with respect to any claim referred to in paragraph (6) of subsection (a), the Commission shall decide the case upon the basis of the record before the General Claims Commission.

SEC. 4. (a) The Commission shall also have authority, within its discretion, as hereinafter provided to examine and render final decisions (1) in those cases in which the two Commissioners designated by the United States and Mexico, respectively, pursuant to the General Claims Protocol between the United States and Mexico signed April 24, 1934 (48 Stat. 1844), failed to reach agreements and the Commissioner so designated by the United States made appraisals, and (2) in those cases in which appraisals

were made by the Commissioner designated by the United States pursuant to the Agrarian Claims Agreement of 1938.

(b) In connection with such cases, the Commission shall, as soon as practicable, notify each claimant, or his attorney, by registered mail to his last-known address, of the appraisals so made. Within a period of thirty days after the mailing of such notice, the claimant shall notify the Commission in writing whether the appraisal so made is accepted as final and binding, or whether a petition for review will be filed as provided in subsection (c). If the claimant fails to so notify the Commission in writing within such period, or if the Commission is notified within such period of the final acceptance of such appraisal, it shall, at the expiration of such period, enter an award on the basis of such appraisal and certify such award to the Secretary of the Treasury.

(c) In any case in which the Commission is so notified in writing that a petition for review will be filed, the Commission shall prescribe a reasonable period, which may be extended in the discretion of the Commission, within which such petition, together with written legal contentions in support thereof, shall be filed. If no petition for review is filed within the period or any extension thereof prescribed by the Commission, it shall enter an award on the basis of the appraisal in such case and certify such award to the Secretary of the Treasury.

(d) In any case in which a petition for review is filed within the period prescribed in subsection (c), the Commission shall, if it determines to review such case, decide the case upon the basis of (1) the record before the Commissioner at the time his appraisal in such case was made, and (2) the written legal contentions filed with such petition or in connection therewith: *Provided*, That the Commission may, in its discretion, receive and consider additional evidence with respect to any claim in which it is established to the satisfaction of the Commission that it was impossible for either the claimant or his attorney, despite the exercise of due diligence, to obtain and file such evidence within any period prescribed for such filing by or in accordance with the applicable agreements between the Government of the United States and the Government of Mexico, or by or in accordance with the applicable rules adopted pursuant to such agreements.

SEC. 5. (a) All claims decided by the Commission shall be decided in accordance with the applicable provisions of the Convention of September 8, 1923, the Convention of September 10, 1923, or the Agrarian Claims Agreement of 1938, as the case may be; and all claims decided by the Commission which are not within the purview of either of such Conventions or such Agreement shall be decided in accordance with the applicable principles of international law, justice and equity.

(b) Each decision of the Commission pursuant to this Act shall be by majority vote, shall state the reasons for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) In connection with any claim decided by the Commission pursuant to this Act in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorneys' fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the amount of the award, unless in special circumstances the Commission shall find that a larger fee is just and reasonable. Any fees so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury. Any person who accepts any compensation for services rendered with respect to such claim which, when added to any amount previously received on account of such services, will exceed the amount of fees so determined by the Commission, shall, upon conviction thereof, be fined not more than \$1,000.

(d) The Commission shall, upon the completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following—

- (1) A list of all claims disallowed;
- (2) A list of all claims allowed, in whole or in part (together with the amount of each claim and the amount awarded thereon) which have not been previously certified under section 4 (b) or 4 (c); and
- (3) A copy of the decision rendered in each case.

SEC. 6. (a) For the purposes of this Act, the following determinations heretofore made with respect to claims on behalf of American nationals against the Government of Mexico shall be regarded as final and binding—

- (1) Decisions rendered by the General Claims Commission, except in the cases referred to in paragraph (6) of section 3 (a) of this Act;
- (2) Appraisals agreed upon by the Commissioners designated by the Governments of the United States and Mexico, respectively, pursuant to the General Claims Protocol between the United States and Mexico signed April 24, 1934 (48 Stat. 1844);
- (3) Appraisals made by the Commissioner designated by the Government of the United States in those cases in which the two Commissioners designated pursuant to said Protocol failed to agree upon appraisals, except where such appraisals are reviewed by the Commission pursuant to section 4; and
- (4) Appraisals made by the Commissioner designated by the Government of the United States pursuant to the Agrarian Claims Agreement of 1938, except where such appraisals are reviewed by the Commission pursuant to section 4.

(b) The Secretary of State shall, as soon as possible, certify to the Secretary of the Treasury lists of the awards and appraisals made in favor of American nationals in the cases referred to in paragraphs (1) and (2) of subsection (a).

SEC. 7. For the purposes of this Act, appraisals made in favor of American nationals in terms of Mexican currency shall be converted into currency of the United States at the exchange rate of

\$0.4985, and in any case in which an award or appraisal made in favor of an American national bears interest, such interest shall be simple interest computed at 6 per centum per annum and shall run from the date specified in such award or appraisal to November 19, 1941.

SEC. 8. (a) There is hereby created in the Treasury of the United States a special fund to be known as the "Mexican Claims Fund," hereinafter called the "fund." All payments authorized under section 9 of this Act shall be disbursed from the fund, and all amounts covered into the Treasury to the credit of the fund, less the amount of the deduction provided for in section 10 (b), are hereby permanently appropriated for the making of the payments authorized by such section.

(b) The Secretary of the Treasury is authorized and directed to cover into the fund—

(1) the sum of \$3,000,000, representing the total amount of payments heretofore made by the Government of Mexico under the Agrarian Claims Agreement of 1938;

(2) the sum of \$3,000,000 which was paid by the Government of Mexico upon exchange of ratifications of the Convention signed November 19, 1941;

(3) such other sums as are paid by the Government of Mexico pursuant to the provisions of the said Convention; and

(4) the sum of \$533,658.95, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, and which represents the total amount of awards and appraisals, plus interest, made with respect to the claims on behalf of Mexican nationals against the Government of the United States which were filed with the General Claims Commission.

(c) The Secretary of the Treasury is authorized and directed, out of the sums covered into the fund pursuant to subsection (b) of this section, and after making the deduction provided for in section 10 (b), to make payments on account of awards and appraisals certified pursuant to sections 4 (b), 4 (c), and 6 (b) of this Act, of an amount not to exceed 30 per centum of the award or appraisal in each case, exclusive of interest.

(d) The Secretary of the Treasury is authorized and directed, to the extent that it may be possible to do so out of the sums covered into the fund pursuant to subsection (b) of this section, and after making the deduction provided for in section 10 (b)—

(1) to make similar payments of not to exceed 30 per centum on account of the principal amount of the awards certified pursuant to section 5 (d) of this Act.

(2) after completing the payments prescribed by paragraph (1) of this subsection, to make payments, from time to time and in ratable proportions, on account of all awards and appraisals certified pursuant to the provisions of this Act, according to the proportions which the respective awards and appraisals, exclusive of interest, bear to the total amount in

the fund available for distribution at the time such payments are made; and

(3) after payment has been made of the principal amounts of all such awards and appraisals, to make pro rata payments on account of accrued interest on such awards and appraisals as bear interest.

SEC. 9. (a) Subject to the limitations hereinafter provided, payments pursuant to section 8 of this Act, the Act approved April 10, 1935 (49 Stat. 149), and the joint resolution approved August 25, 1937 (50 Stat. 783), and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b) Such payments shall be made only to the person or persons on behalf of whom the award or appraisal is made, except that—

(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided*, That if the amount to be disbursed at any one time is not over \$500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Secretary of the Treasury to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;

(2) if an award or appraisal is made to the estate of a deceased person, and if there has been no administration of such person's estate, or if the administration of such person's estate has been terminated, payment may be made to the person or persons found by the Secretary of the Treasury to be entitled thereto;

(3) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award or appraisal is made, payment shall be made, except as provided in paragraphs (4) and (5), to the person or persons found by the Secretary of the Treasury to be entitled thereto;

(4) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee or in accordance with the order of the court;

(5) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award or appraisal is made, or makes an assignment of such award or appraisal, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(6) In the case of an assignment of an award or an appraisal, or any part thereof, which is made in writing and duly acknowledged and filed, after such award or appraisal is certified to the Secretary of the Treasury, payment may, in

the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(c) Whenever the Secretary of the Treasury shall find that any person is entitled to any such payment, such finding shall be an absolute bar to recovery by any other person against the United States, its officers, agents, or employees with respect to such payment.

(d) Any person who makes application for any such payment shall be held to have consented to all the provisions of this Act.

(e) The decisions of the Secretary of the Treasury in making such payments shall be final and conclusive and shall not be subject to review by any other officer of the Government.

(f) Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any American national against the Government of Mexico.

SEC. 10. (a) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Commission to carry out its functions under this Act.

(b) There shall be deducted from the amount of each payment made from the fund pursuant to subsections (c) and (d) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 5 per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

SEC. 11. (a) The Secretary of the Treasury shall continue to distribute to the beneficiaries of the final awards rendered by the Special Mexican Claims Commission all moneys heretofore or hereafter received from the Government of Mexico pursuant to the Convention signed April 24, 1934, including interest on deferred payments.

(b) So much of the Act approved April 10, 1935, and of the joint resolution approved August 25, 1937, as may be inconsistent with this Act, is hereby repealed.

SEC. 12. Nothing in this Act is intended, or shall be deemed or construed, to apply to any claim or part of claim based upon or arising out of any international arbitral award rendered prior to the effective date of the convention between the United States and Mexico signed September 8, 1923.

SEC. 13. As used in this Act—

(a) The term "person" includes an individual, partnership, or corporation.

(b) The term "United States", when used in a geographical sense, includes the United States, its Territories and insular possessions (including the Philippine Islands), and the Canal Zone.

(c) The term "American national" includes (1) any person who is a citizen of the United States, and (2) any person who, though not a citizen of the United States, owes permanent allegiance to the United States.

SEC. 14. The following provisions of law are hereby repealed—

(a) So much of the Department of State Appropriation Act, 1936 (49 Stat. 76), of the Department of State Appropriation Act, 1937 (49 Stat. 1320), and of the Department of State Appropriation Act, 1938 (50 Stat. 271), as reads as follows: "*Provided further*, That from any sums received from the Mexican Government in settlement of a general claim of an American citizen against it, there shall be deducted and deposited in the Treasury of the United States as miscellaneous receipts, 5 per centum thereof in reimbursement of the Government of the United States of expenses incurred by it in respect of such claim".

(b) That portion of the joint resolution approved April 10, 1939 (53 Stat. 573), reading as follows: "*Provided*, That any expenditures from the amount herein authorized to be appropriated shall become a first charge upon any moneys received from the Government of Mexico in settlement of the respective claims, and the amount of such expenditures shall be deducted from the first payment by the Mexican Government and deposited in the Treasury of the United States as miscellaneous receipts."

Approved, December 18, 1942.

JOINT RESOLUTION OF THE UNITED STATES CONGRESS,
APPROVED APRIL 3, 1945¹

JOINT RESOLUTION

Relative to determination and payment of certain claims against
the Government of Mexico.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Settlement of Mexican Claims Act of 1942, approved December 18, 1942 (56 Stat. 1058), is amended by adding a new subsection numbered (d) and reading as follows:

"(d) In any case in which the Commission shall enter an award, it shall, as soon as practicable, certify such award to the Secretary of the Treasury."

SEC. 2. Section 5 (d) of such Act is amended to read as follows:

"(e) The Commission shall, upon the completion of its work, transmit in duplicate to the Secretary of State and to the Secretary of the Treasury the following:

"(1) A list of all claims disallowed;

"(2) A list of all claims allowed, in whole or in part (together with the amount of each claim and the amount awarded thereon); and

"(3) A copy of the decision rendered in each case."

SEC. 3. Section 8 (c) of such Act is amended to read as follows:

"(c) The Secretary of the Treasury is authorized and directed, out of the sums covered into the fund pursuant to subsection (b) of this section, and after making the deduction provided for in section 10 (b), to make payments on account of awards and appraisals certified pursuant to sections 4 (b), 4 (c), and 6 (b) of this Act, prior to the date of the enactment of the Settlement of Mexican Claims Act Amendments of 1945 of an amount not to exceed 30 per centum of the award or appraisal in each case, exclusive of interest; and, on and after July 1, 1945, the Secretary of the Treasury is authorized and directed, out of the sums covered into the fund pursuant to subsection (b) of this section, and after making the deduction provided for in section 10 (b), to make an additional payment on account of awards and appraisals certified pursuant to sections 4 (b), 4 (c), and 6 (b) of this Act prior to the date of the enactment of the Settlement of Mexican Claims Act Amendments of 1945, of an amount not to exceed 10 per centum of the award or appraisal in each case, exclusive of interest."

SEC. 4. Section 4 (b) of such Act is amended to read as follows:

"(b) In connection with such cases, the Commission shall, as soon as practicable, notify each claimant, or his attorney, by registered mail to his last-known address, of the appraisals so made. Within a period of thirty days after the mailing of such notice, the claimant shall notify the Commission in writing whether the appraisal so made is accepted as final and binding, or whether a pe-

¹ Public Law 29, 79th Cong., 1st sess.; 59 Stat. 49.

tition for review will be filed as provided in subsection (c). If the claimant fails to so notify the Commission in writing within such period, or if the Commission is notified within such period of the final acceptance of such appraisal, it shall, at the expiration of such period, enter an award on the basis of such appraisal: *Provided*, That if the Commission's efforts to notify the respective claimants, or their attorneys have failed to disclose their whereabouts, the Commission may, at the expiration of a period of thirty days from the date of the enactment of the Settlement of Mexican Claims Act Amendments of 1945, enter an award on the basis of such appraisal."

SEC. 5. Section 2 (d) of such Act is amended to read as follows:

"(d) The authority of the Commission under this Act, and the terms of office of its members, shall terminate at the expiration of four years after the date on which a majority of its members first appointed take office, but the President may by Executive order fix an earlier termination date. Upon the termination of the authority of the Commission, all books, records, documents, and other papers in the possession of the Commission shall be deposited with the Department of State."

SEC. 6. So much of section 8 (d) of such Act as precedes paragraph (2) is amended to read as follows:

"(d) On or after July 1, 1945, the Secretary of the Treasury is authorized and directed, to the extent that it may be possible to do so out of the sums covered into the fund pursuant to subsection (b) of this section, and after making the deduction provided for in section 10 (b)—

"(1) to make similar payments of not to exceed 40 per centum on account of the principal amount of the awards certified pursuant to section 5 (d) of this Act."

SEC. 7. Section 4 (c) of such Act is amended to read as follows:

"(c) In any case in which the Commission is so notified in writing that a petition for review will be filed, the Commission shall prescribe a reasonable period, which may be extended in the discretion of the Commission, within which such petition, together with written legal contentions in support thereof, shall be filed. If no petition for review is filed within the period or any extension thereof prescribed by the Commission, it shall enter an award on the basis of the appraisal in such case."

SEC. 8. This joint resolution may be cited as the "Settlement of Mexican Claims Act Amendments of 1945".

Approved April 3, 1945.

JOINT RESOLUTION OF THE UNITED STATES CONGRESS,
APPROVED MARCH 28, 1947¹

JOINT RESOLUTION

Amending the Settlement of Mexican Claims Act of 1942 to provide for the consideration of any claim decided by the General Claims Commission in which the United States filed a petition for rehearing.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Settlement of Mexican Claims Act of 1942, approved December 18, 1942, be amended by adding after section 3 (a), paragraph (6) thereof, the following paragraph:

“(7) Any claim decided by the General Claims Commission in which the United States filed a petition for rehearing.”

Approved March 28, 1947.

¹ Public Law 28, 80th Cong., 1st sess.; S. J. Res. 27.

RULES AND REGULATIONS ADOPTED BY THE AMERICAN MEXICAN CLAIMS COMMISSION ON MAY 18, 1943

Pursuant to section 2 (c) of the Settlement of Mexican Claims Act of 1942 (56 Stat. 1058; 22 U. S. C., Sup. II, 661 (c)), the following rules and regulations relating to claims before the American Mexican Claims Commission established pursuant to the Settlement of Mexican Claims Act of 1942 are hereby promulgated by the Commission:

Section

- 1 Notification to claimants.
- 2 Decisions of the Commission.
- 3 New claims.
- 4 Period for filing new claims.
- 5 Method of filing new claims.
- 6 Evidence in support of new claims.
- 7 Claims in which appraisals have already been made.
- 8 Other claims.
- 9 Access to records of the Commission.
- 10 Fees of attorneys.
- 11 Relation between the Commission and claimants.

RULES AND REGULATIONS

SECTION 1 *Notification to claimants.* (a) Notification of the establishment of this Commission and of these rules and regulations shall be sent as soon as practicable to all persons who appear from the records of the Department of State, or from advice otherwise received by the Commission, to have claims within the purview of section 3 (a), and to all persons having claims of record with respect to which appraisals were made within the purview of section 4 (a), of the Settlement of Mexican Claims Act of 1942. Notification shall also be made through the press and in such other manner as the Commission may deem appropriate for the benefit of persons who may desire to present claims to the Commission and who have not previously brought their claims to the attention of the Government of the United States.

(b) The notification herein provided for shall be without prejudice to the subsequent determination of the rights of the persons so notified, or of other persons claiming as assignees, heirs, executors, administrators, or otherwise, with respect to the prosecution of claims before this Commission.

SEC. 2 *Decisions of the Commission.* The bases of decisions to be rendered by the Commission are prescribed by section 5 (a) of the Settlement of Mexican Claims Act of 1942.

SEC. 3 *New claims.* New claims are those comprehended by paragraphs (1), (2), (3), and (4) of section 3 (a) of the Settlement of Mexican Claims Act of 1942.

SEC. 4 *Period for filing new claims.* Under the provisions of section 2 (d) of the Settlement of Mexican Claims Act of 1942, the Commission is required to complete its work not later than

two years from April 5, 1943. It is therefore necessary that all new claims to be considered by the Commission be filed with it on or before December 1, 1943. The Commission may, in its discretion and for good cause shown, grant an extension of time for filing a new claim in any particular case. A claim shall be considered as filed on the date when it is received at the office of the Commission.

SEC. 5 *Method of filing new claims.* New claims may be filed in single copy only either by the claimant personally or by a duly authorized attorney. In the latter case, however, written authority for the attorney to act in that capacity shall accompany the claim. The statement of claim, which shall consist of a chronological narration of all pertinent matters tending to establish a valid claim, such as claimant's American nationality, nature of property interest involved, details concerning the acquisition thereof, acts of officials of the Mexican Government giving rise to the claim, nature and extent of loss or damage for which claim is made, etc., shall be verified under oath either by the claimant or by his attorney.

SEC. 6 *Evidence in support of new claims.* (a) Evidence filed in support of claims shall accompany the statement of claim and shall, wherever possible, be in the form of either original documents or properly certified copies of originals. The Commission will receive and consider all written evidence of an authentic nature presented in support of claims and will attach such weight thereto as in its judgment seems proper. Documents filed in the Spanish language should be accompanied by an authentic translation thereof.

(b) It is essential that claimants fully understand the necessity for the complete preparation and filing of claims and supporting evidence at the earliest practicable date. Time-limits for the filing of evidence in individual claims will be fixed by the Commission as the necessities of its work may require.

(c) Allegations of claimants, unsupported by other evidence, cannot be regarded as satisfactory proof of facts with respect to which such allegations are made.

(d) Fundamental requirements in the matter of evidence in support of claims include, among other things:

- (1) Proof of the American nationality of all persons or concerns on whose behalf claim is made;
- (2) Proof of the ownership or other interest on the part of claimants in real or personal property where loss of, injury to, or wrongful interference with such property is alleged as a basis of claim;
- (3) Proof of alleged wrongful acts or omissions on the part of officials of the Mexican Government where liability is predicated upon such acts or omissions;
- (4) Proof of the nature and amount of damages for which claim is made.

(e) With respect to claims comprehended by paragraph (4) of section 3 (a) of the Settlement of Mexican Claims Act of 1942, involving international responsibility of the Government of Mex-

ico, the bases of such alleged responsibility under international law shall be clearly set forth in the statement of claim.

SEC. 7 *Claims in which appraisals have already been made.*

(a) Claimants whose claims have already been appraised either by the American Commissioner designated pursuant to the protocol of April 24, 1934 (48 Stat. 1844), or by the American Commissioner appointed under the Agrarian Claims Agreement of 1938 (53 Stat. 2442) (see section 4 (a) of the Settlement of Mexican Claims Act of 1942), and to whom notices of such appraisals are sent, shall notify the Commission in writing within a period of 30 days from the date of the mailing of such notification whether the appraisal so made is accepted as final and binding, or whether it is intended to file a petition for a review of such appraisal as provided in section 4 (c) of the Settlement of Mexican Claims Act of 1942.

(b) In the event that claimant fails within the specified period to so notify the Commission, or in the event that the Commission is notified within that period of the acceptance of the appraisal, it will, at the expiration of that period, enter an award on the basis of the appraisal and certify the award to the Secretary of the Treasury.

(c) Should the claimant desire to exercise the option of filing a petition for a review by this Commission of the appraisal already made, by making known such desire as provided in section 7 (a), a period of 45 days from the date the Commission receives such notice will be allowed for the filing of the petition, which must be accompanied by such written legal contentions as the claimant may desire to make in support thereof. If no petition for review is filed within the period just mentioned, or within any extension thereof which may, in the discretion of the Commission, be granted, the Commission will enter an award on the basis of the appraisal already made and certify the award to the Secretary of the Treasury.

(d) In the event the Commission decides to review a claim, it may, in its discretion, permit the filing of additional evidence in support of the claim, provided that it is established to the satisfaction of the Commission that it was impossible for the claimant or his attorney, despite the exercise of due diligence, to obtain and file such evidence within any period prescribed for such filing by or in accordance with the applicable agreements between the Government of the United States and the Government of Mexico, or by or in accordance with the applicable rules adopted pursuant to such agreements.

(e) No evidence shall be filed in support of any claim under section 7 (d) unless the permission of the Commission has been obtained in advance. Applications for such permission shall set forth the nature of the evidence which it is desired to file and shall be accompanied by such documentary evidence as the claimant may desire to submit in support of allegations that it was impossible for either him or his attorney, despite the exercise of due diligence, to obtain and file such evidence within any period prescribed for such filing by or in accordance with the applicable

agreements between the Government of the United States and the Government of Mexico, or by or in accordance with the applicable rules adopted pursuant to such agreements.

SEC. 8 *Other claims.* Should a claimant desire to file additional evidence in support of a claim comprehended by paragraph 5 of section 3 (a) of the Settlement of Mexican Claims Act of 1942, a request for permission to file such evidence, accompanied by a statement of the nature thereof, shall be made of the Commission within a period of 30 days from the date of the mailing of the letter notifying the claimant of the action taken with respect to such claim by the American Commissioner pursuant to the protocol of April 24, 1934.

SEC. 9 *Access to records of the Commission.* Evidence in the possession of the Commission filed by claimants or their attorneys in support of individual claims, correspondence between claimants or their attorneys and this Commission or previous Commissions regarding their claims, as well as pleadings and briefs filed in support thereof, may, in the discretion of the Commission, be examined in the Office of the Commission by the claimants or their duly authorized attorneys.

SEC. 10 *Fees of attorneys.* In any case decided by the Commission in connection with which either the claimant or his attorney desires that the fee of the latter for services rendered in connection with the preparation or prosecution of the claim be determined and apportioned in accordance with the provisions of section 5 (c) of the Settlement of Mexican Claims Act of 1942, a request in writing to that effect shall be communicated to the Commission at the earliest practicable date.

SEC. 11 *Relation between the Commission and claimants.* Responsibility for the proper preparation of a claim and documents presented in connection therewith rests solely upon the claimant or his attorney. The functions of the Commission are judicial in nature and neither the Commission nor persons in its employ may assist claimants or their attorneys in the preparation or prosecution of claims or discuss the merits of claims with claimants or their attorneys.

EDGAR E. WITT, *Chairman.*

SAMUEL M. GOLD, *Commissioner.*

CHARLES F. McLAUGHLIN, *Commissioner.*

1653 PENNSYLVANIA AVENUE NW.

Washington, D. C., May 18, 1943.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND MEXICO, SEPTEMBER 8, 1923 ¹

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS a Convention between the United States of America and the United Mexican States providing for the amicable settlement and adjustment of claims by the citizens of each country against the other, was concluded and signed by their respective Plenipotentiaries at Washington on the eighth day of September, one thousand nine hundred and twenty-three, the original of which Convention, being in the English and Spanish languages is word for word as follows:

The United States of America and the United Mexican States, desiring to settle and adjust amicably claims by the citizens of each country against the other since the signing on July 4, 1868, of the Claims Convention entered into between the two countries (without including the claims for losses or damages growing out of the revolutionary disturbances in Mexico which form the basis of another and separate Convention), have decided to enter into a Convention with this object, and to this end have nominated as their Plenipotentiaries:

The President of the United States of America:

The Honorables Charles Evans Hughes, Secretary of State of the United States of America, Charles Beecher Warren and John Barton Payne, and

The President of the United Mexican States:

Señor Don Manuel C. Téllez, Chargé d'Affaires ad interim of the United Mexican States at Washington;

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following Articles:

ARTICLE I.

All claims (except those arising from acts incident to the recent revolutions) against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America by citizens of Mexico, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in which such citizens have or have had a substantial and bona fide interest, provided an allotment to the claimant by the

¹ Treaty Series No. 678; 48 Stat. 1780.

corporation, company, association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the Commission hereinafter referred to; and all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other since the signing of the Claims Convention concluded between the two countries July 4, 1868 and which have remained unsettled as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity.

Such Commission shall be constituted as follows: one member shall be appointed by the President of the United States; one by the President of the United Mexican States; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this Convention in naming such third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article XLIX of the Convention for the pacific settlement of international disputes concluded at The Hague on October 18, 1907. In case of the death, absence or incapacity of any member of the Commission, or in the event of a member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE II.

The Commissioners so named shall meet at Washington for organization within six months after the exchange of the ratifications of this Convention, and each member of the Commission, before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of international law, justice and equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Commission may fix the time and place of its subsequent meetings, either in the United States or in Mexico, as may be convenient, subject always to the special instructions of the two Governments.

ARTICLE III.

In general, the Commission shall adopt as the standard for its proceedings the rules of procedure established by the Mixed Claims Commission created under the Claims convention between the two Governments signed July 4, 1868, in so far as such rules

are not in conflict with any provision of this Convention. The Commission, however, shall have authority by the decision of the majority of its members to establish such other rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this Convention.

Each Government may nominate and appoint agents and counsel who will be authorized to present to the Commission, orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be English or Spanish.

ARTICLE IV.

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a Secretary; these Secretaries shall act as joint Secretaries of the Commission and shall be subject to its instructions. Each Government may also appoint and employ any necessary assistant secretaries and such other assistance as deemed necessary. The Commission may also appoint and employ any persons necessary to assist in the performance of its duties.

ARTICLE V.

The High Contracting Parties, being desirous of effecting an equitable settlement of the claims of their respective citizens thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VI.

Every such claim for loss or damage accruing prior to the signing of this Convention, shall be filed with the Commission within one year from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed six additional months.

The Commission shall be bound to hear, examine and decide, within three years from the date of its first meeting, all the claims filed, except as hereinafter provided in Article VII.

Four months after the date of the first meeting of the Commissioners, and every four months thereafter, the Commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The Commission shall be bound to decide any claim heard and examined within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VII.

The High Contracting Parties agree that any claim for loss or damage accruing after the signing of this Convention, may be filed by either Government with the Commission at any time during the period fixed in Article VI for the duration of the Commission; and it is agreed between the two Governments that should any such claim or claims be filed with the Commission prior to the termination of said Commission, and not be decided as specified in Article VI, the two Governments will by agreement extend the time within which the Commission may hear, examine and decide such claim or claims so filed for such a period as may be required for the Commission to hear, examine and decide such claim or claims.

ARTICLE VIII.

The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention (except as to claims arising from revolutionary disturbances and referred to in the preamble hereof). And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission shall from and after the conclusion of the proceedings of the Commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

ARTICLE IX.

The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country and the balance shall be paid at Washington or at the City of Mexico, in gold coin or its equivalent to the Government of the country in favor of whose citizens the greater amount may have been awarded.

In any case the Commission may decide that international law, justice and equity require that a property or right be restored to the claimant in addition to the amount awarded in any such case for all loss or damage sustained prior to the restitution. In any case where the Commission so decides the restitution of the property or right shall be made by the Government affected after such decision has been made, as hereinbelow provided. The Commission, however, shall at the same time determine the value of the property or right decreed to be restored and the Government affected may elect to pay the amount so fixed after the decision is made rather than to restore the property or right to the claimant.

In the event the Government affected should elect to pay the amount fixed as the value of the property or right decreed to be restored, it is agreed that notice thereof will be filed with the Commission within thirty days after the decision and that the amount fixed as the value of the property or right shall be paid immediately. Upon failure so to pay the amount the property or right shall be restored immediately.

ARTICLE X.

Each Government shall pay its own Commissioner and bear its own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two Governments.

ARTICLE XI.

The present Convention shall be ratified by the High Contracting Parties in accordance with their respective Constitutions. Ratifications of this Convention shall be exchanged in Washington as soon as practicable and the Convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed and affixed their seals to this Convention.

Done in duplicate at Washington this eighth day of September, 1923.

CHARLES EVANS HUGHES	[SEAL.]
CHARLES BEECHER WARREN	[SEAL.]
JOHN BARTON PAYNE	[SEAL.]
MANUEL C. TÉLLEZ	[SEAL.]

AND WHEREAS the said Convention, has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the first day of March, one thousand nine hundred and twenty-four;

NOW, THEREFORE, be it known that I, Calvin Coolidge, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States to be affixed.

DONE at the city of Washington, this third day of March, in the year of our Lord one thousand nine hundred and [SEAL.] twenty-four, and of the Independence of the United States of America the one hundred and forty-eighth.

CALVIN COOLIDGE

By the President:

CHARLES E. HUGHES

Secretary of State.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND MEXICO, SEPTEMBER 10, 1923¹

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and the United Mexican States providing for the settlement and amicable adjustment of claims arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910 to May 31, 1920, inclusive, was concluded and signed by their respective Plenipotentiaries at Mexico City on the 10th day of September, one thousand nine hundred and twenty-three, the original of which Convention, being in the English and Spanish languages is word for word as follows:

SPECIAL CLAIMS CONVENTION.

The United States of America and the United Mexican States, desiring to settle and adjust amicably claims arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910, to May 31, 1920, inclusive, have decided to enter into a Convention for that purpose, and to this end have nominated as their Plenipotentiaries:

The President of the United States:

George F. Summerlin Chargé d'Affaires ad interim of the United States of America in Mexico.

The President of the United Mexican States:

Alberto J. Pani, Secretary of State for Foreign Affairs.

Who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following Articles:

ARTICLE I.

All claims against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties during the revolutions and disturbed conditions which existed in Mexico, covering the period from November 20, 1910, to May 31, 1920, inclusive, including losses or damages suffered by citizens of the United States by reason of losses or damages suffered by any corporation, company, association or partnership in which citizens of the United States have or have had a substantial and bona fide interest, provided an allotment to the American claimant by the corporation, company, association or partnership of his proportion of the loss or damage is presented by the claimant to the Commission hereinafter referred to, and which claims

¹ Treaty Series No. 676; 43 Stat. 1722.

have been presented to the United States for its interposition with Mexico, as well as any other such claims which may be presented within the time hereinafter specified, shall be submitted to a Commission consisting of three members.

Such Commission shall be constituted as follows: one member shall be appointed by the President of the United States; one by the President of the United Mexican States; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this Convention in naming such third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article 49 of the Convention for the Pacific Settlement of International Disputes concluded at The Hague on October 18, 1907. In case of the death, absence or incapacity of any member of the Commission, or in the event of a member omitting or ceasing to act as such the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE II.

The Commissioners so named shall meet at Mexico City within six months after the exchange of the ratifications of this Convention, and each member of the Commission, before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide, according to the best of his judgment and in accordance with the principles of justice and equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Mexican Government desires that the claims shall be so decided because Mexico wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of international law, but *ex gratia* feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained and was due to any of the causes enumerated in Article III hereof.

The Commission may fix the time and place of its subsequent meetings, as may be convenient, subject always to the special instructions of the two Governments.

ARTICLE III.

The claims which the Commission shall examine and decide are those which arose during the revolutions and disturbed conditions which existed in Mexico covering the period from November 20, 1910, to May 31, 1920, inclusive, and were due to any act by the following forces:

- (1) By forces of a Government *de jure* or *de facto*.
- (2) By revolutionary forces as a result of the triumph of whose

cause governments *de facto* or *de jure* have been established, or by revolutionary forces opposed to them.

(3) By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government *de jure* established itself as a result of a particular revolution.

(4) By federal forces that were disbanded, and

(5) By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions (2), (3) and (4) above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars.

ARTICLE IV.

In general, the Commission shall adopt as the standard for its proceedings the rules of procedure established by the Mixed Claims Commission created under the Claims Convention between the two Governments signed July 4, 1868, in so far as such rules are not in conflict with any provision of this Convention. The Commission, however, shall have authority by the decision of the majority of its members to establish such other rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this Convention.

Each Government may nominate and appoint agents and counsel who will be authorized to present to the Commission, orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be Spanish or English.

ARTICLE V.

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a Secretary; these Secretaries shall act as joint Secretaries of the Commission and shall be subject to its instructions. Each Government may also appoint and employ any necessary assistant secretaries and such other assistance as deemed necessary. The Commission may also appoint and employ any persons necessary to assist in the performance of its duties.

ARTICLE VI.

Since the Mexican Government desires to arrive at an equitable settlement of the claims of the citizens of the United States and to grant them a just and adequate compensation for their losses or damages, the Mexican Government agrees that the Commission shall not disallow or reject any claim by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VII.

Every claim shall be filed with the Commission within two years from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed six additional months.

The Commission shall be bound to hear, examine and decide, within five years from the date of its first meeting, all the claims filed.

Four months after the date of the first meeting of the Commissioners, and every four months thereafter, the Commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The Commission shall be bound to decide any claim heard and examined within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VIII.

The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon the Mexican Government, arising from any of the causes set forth in Article III of this Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission shall from and after the conclusion of the proceedings of the Commission be considered and treated as fully settled, barred and thenceforth inadmissible, provided the claim filed has been heard and decided.

ARTICLE IX.

The total amount awarded to claimants shall be paid in gold coin or its equivalent by the Mexican Government to the Government of the United States at Washington.

ARTICLE X.

Each Government shall pay its own Commissioner and bear its

own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two Governments.

ARTICLE XI.

The present Convention shall be ratified by the High Contracting Parties in accordance with their respective Constitutions. Ratifications of this Convention shall be exchanged in Mexico City as soon as practicable and the Convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed and affixed their seals to this Convention.

Done in duplicate at Mexico City this tenth day of September, 1923.

GEORGE F. SUMMERLIN. [SEAL]
A J PANI [SEAL]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Mexico, on the nineteenth day February, one thousand nine hundred and twenty-four;

Now, therefore, be it known that I, Calvin Coolidge, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the Seal of the United States to be affixed.

Done at the city of Washington, this twenty-third day of February, in the year of our Lord one thousand nine [SEAL] hundred and twenty-four, and of the Independence of the United States of America the one hundred and forty-eighth.

CALVIN COOLIDGE

By the President:

CHARLES E. HUGHES
Secretary of State.

PROTOCOL BETWEEN THE UNITED STATES OF AMERICA
AND MEXICO, APRIL 24, 1934¹

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a protocol relative to claims presented to the General Claims Commission established by the convention of September 8, 1923, between the United States of America and the United Mexican States was signed by their respective Plenipotentiaries on the twenty-fourth day of April, one thousand nine hundred and thirty-four, the original of which protocol, being in the English and Spanish languages is word for word as follows:

PROTOCOL RELATIVE TO CLAIMS PRESENTED TO THE
GENERAL CLAIMS COMMISSION, ESTABLISHED BY
THE CONVENTION OF SEPTEMBER 8, 1923.

Josephus Daniels, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Government of Mexico, and José Manuel Puig Casauranc, Secretary for Foreign Affairs of the United Mexican States, duly authorized, have agreed on behalf of their two Governments to conclude the following Protocol:

Whereas, It is the desire of the two Governments to settle and liquidate as promptly as possible those claims of each Government against the other which are comprehended by, and which have been filed in pursuance of the General Claims Convention between the two Governments, concluded on September 8, 1923;

Whereas, It is not considered expedient to proceed, at the present time, to the formal arbitration of the said claims in the manner provided in that Convention;

Whereas, It is considered to be conducive to the best interests of the two Governments, to preserve the *status quo* of the General Claims Convention above mentioned and the Convention extending the duration thereof, which latter was concluded on June 18, 1932, as well as the agreement relating to agrarian claims under Article I of the additional Protocol of June 18, 1932;

Whereas, It is advisable to endeavor to effect a more expeditious and more economical disposition of the claims, either by means of an *en bloc* settlement or a more simplified method of adjudication, and

Whereas, In the present state of development of the numerous claims the available information is not such as to permit the two Governments to appraise their true value with sufficient accuracy to permit of the successful negotiation of an *en bloc* settlement thereof at the present time;

Therefore, It is agreed that:

First.—The two Governments will proceed to an informal discussion of the agrarian claims now pending before the General

¹ Executive Agreement Series No. 57; 48 Stat. 1844.

Claims Commission, with a view to making an adjustment thereof that shall be consistent with the rights and equities of the claimants and the rights and obligations of the Mexican Government, as provided by the General Claims Protocol of June 18, 1932. Pending such discussion no agrarian claims will be presented to the Commissioners referred to in Clause Third nor, in turn, to the Umpire referred to in Clause Fifth of this Protocol; but memorials of cases not yet memorialized may be filed in order to regularize the awards made upon the agreed adjustments.

Consequently, the subsequent provisions of this Protocol shall apply to agrarian claims only insofar as they do not conflict with the status thereof, as exclusively fixed by the terms of the agreed Article I of the additional protocol to the extension of the General Claims Convention, signed June 18, 1932.

Second.—The two Governments shall proceed, in accordance with the provisions of clause Sixth below, promptly to complete the written pleadings and briefs in the remaining unpleaded and incompletely pleaded cases.

Third.—Each Government shall promptly designate, from among its own nationals, a Commissioner, who shall be an outstanding jurist and whose function it shall be to appraise, on their merits, as rapidly as possible, the claims of both Governments which have already been fully pleaded and briefed and those in which the pleadings and briefs shall be completed in accordance herewith.

Fourth.—Six months before the termination of the period herein agreed upon for the completion of the pleadings and briefs referred to in Clause Sixth or at an earlier time should they so agree, the said Commissioners shall meet, at a place to be agreed upon by them, for the purpose of reconciling their appraisals. They shall, as soon as possible, and not later than six months from the date of the completion of the pleadings and briefs, submit to the two Governments a joint report of the results of their conferences, indicating those cases in which agreement has been reached by them with respect to the merits and the amount of liability, if any, in the individual cases and also those cases in which they shall have been unable to agree with respect to the merits or the amount of liability, or both.

Fifth.—The two Governments shall, upon the basis of such joint report, and with the least possible delay, conclude a convention for the final disposition of the claims, which convention shall take one or the other of the two following forms, namely, first, an agreement for an *en bloc* settlement of the claims wherein there shall be stipulated the net amount to be paid by either Government and the terms upon which payment shall be made; or, second, an agreement for the disposition of the claims upon their individual merits. In this latter event, the two above-mentioned Commissioners shall be required to record their agreements with respect to individual claims and the bases upon which their conclusions shall have been reached, in the respective cases.

The report shall be accepted, by the convention to be concluded by the two Governments, as final and conclusive disposi-

tions of those cases. With respect to those cases in which the Commissioners shall not have been able to reach agreements, the two Governments shall, by the said convention, agree that the pleadings and briefs in such cases, together with the written views of the two Commissioners concerning the merits of the respective claims, be referred to an Umpire, whose written decisions shall also be accepted by both Governments as final and binding. All matters relating to the designation of an Umpire, time within which his decisions should be rendered and general provisions relating to his work shall be fixed in a Convention to be negotiated under provisions of this Clause.

Sixth.—The procedure to be followed in the development of the pleadings and briefs, which procedure shall be scrupulously observed by the Agents of the two Governments, shall be the following:

(a) The time allowed for the completion of the pleadings and briefs shall be two years counting from a date hereafter to be agreed upon by the two Governments by an exchange of notes, which shall not be later than November 1, 1934.

(b) The pleadings and briefs of each Government shall be filed at the Embassy of the other Government.

(c) The pleadings and briefs to be filed shall be limited in number to four, namely, Memorial, Answer, Brief and Reply Brief. Only three copies of each need be presented to the other Agent, but four additional copies shall be retained by the filing Agency for possible use in future adjudication. Each copy of Memorial, Answer and Brief shall be accompanied by a copy of all evidence filed with the original thereof. The pleadings and briefs, which may be in either English or Spanish at the option of the filing Government, shall be signed by the respective Agents or properly designated substitutes.

(d) With the Memorial the claimant Government shall file all the evidence on which it intends to rely. With the Answer the respondent Government shall file all the evidence upon which it intends to rely. No further evidence shall be filed by either side except such evidence, with the Brief, as rebutes evidence filed with the Answer. Such evidence shall be strictly limited to evidence in rebuttal and there shall be explained at the beginning of the Brief the alleged justification for the filing thereof. If the other side desires to object to such filing, its views may be set forth in the beginning of the Reply Brief, and the Commissioners, or the Umpire, as the case may require, shall decide the point, and if it is decided that the evidence is not in rebuttal to evidence filed with the Answer, the additional evidence shall be entirely disregarded in considering the merits of the claim.

The Commissioners may at any time order the production of further evidence.

(e) In view of the desire to reduce the number of pleadings and briefs to a minimum in the interest of economy of time and expense, it shall be the obligation of both Agents fully and clearly to state in their Memorials the contention of the claimant Government with respect to both the factual bases of the claims in

question and the legal principles upon which the claims are predicated and, in the Answer, the contentions of the respondent Government with regard to the facts and legal principles upon which the defense of the case rests. In cases in which Answers already filed do not sufficiently meet this provision so as to afford the claimant Government an adequate basis for preparing its legal Brief with full general knowledge of the factual and legal defenses of the respondent Government, it shall have the right to file a Counter Brief within thirty days following the date of filing the Reply Brief.

(f) For the purposes of the above pleadings and briefs, as well as the appraisals and decisions of the two Commissioners and the decisions of the Umpire, above mentioned, the provisions of the General Claims Convention of September 8, 1923, shall be considered as fully effective and binding upon the two Governments, except insofar as concerns the matter of procedure, which shall be that provided for herein.

(g) Whenever practicable, cases of a particular class shall be grouped for memorializing and/or for briefing.

(h) In order that the two Agents may organize their work in the most advantageous manner possible and in order that the two-year period allowed for pleadings and briefs may be utilized, in a manner which shall be most equitable to both sides, each Agent shall, within thirty days from the beginning of the two-year pleading period, submit to the other Agent a tentative statement showing the total number of Memorials and Briefs such Agent intends to file. Six months after the beginning of the two-year pleading period, the two Agents shall respectively submit in the same manner statements setting out definitely by name and docket number the claims in which it is proposed to complete the pleadings and briefs, indicating those in which they intend to combine cases in the manner indicated in paragraph (g) above. The number of pleadings and briefs so indicated shall not, except by later agreement between the two Governments, be exceeded by more than ten percent.

(i) In order to enable the Agencies to distribute their work equally over the two-year pleading period, each Agency shall be under the obligation to file its Memorials at approximately equal intervals during the first seventeen months of the two-year period, thus allowing the remaining seven months of the period for the completion of the pleadings and briefs in the last case memorialized. The same obligation shall attach with respect to the filing of the pleadings and briefs referred to in paragraph (k) below.

(j) The time to be allowed for filing Answers shall be seventy days from the date of filing Memorials. The time to be allowed for filing Briefs shall be seventy days from the date of filing the Answers. The time to be allowed for filing Reply Briefs shall be seventy days from the date of filing the Briefs.

(k) In those cases in which some pleadings or briefs were filed with the General Claims Commission before the date of signature hereof, the Agency which has the right to file the next pleading or

brief shall be allowed to determine when that document shall be filed, taking into consideration the necessity of complying with the provisions of paragraph (i) above.

(l) In counting the seventy-day periods mentioned in paragraph (j) above, no deductions shall be made for either Sundays or holidays. The date of filing the above described pleadings and briefs shall be considered to be the date upon which they shall be delivered at the Embassy of the other Government. If the due date shall fall on Sunday or a legal holiday, the pleading or brief shall be filed upon the next succeeding business day. The two Governments shall, for this purpose, instruct their respective Embassies to receive and give receipts for such pleadings and briefs any weekday between the hours of 10 and 16 (4 p.m.) except on the following legal holidays of both countries:

Of the United States

January 1
February 22
May 30
July 4
First Monday in
September
Last Thursday in
November
December 25

Of Mexico

January 1
February 5
May 1
May 5
September 14
September 15
September 16
October 12
November 20
December 25
December 31.

(m) In view of the herein prescribed limitations upon the time allowed for the completion of the work of the Agencies and the Commissioners, it is recognized that the success of this simplified plan of procedure depends fundamentally upon the prompt and regular filing of the pleadings and briefs in accordance with the provisions of this Protocol. It is agreed, therefore, that any pleading or brief which shall be filed more than thirty days after the due date for the filing thereof, shall be disregarded by the Commissioners and the Umpire, and that the respective case shall be considered by them upon the pleadings and briefs preceding the tardy pleadings and briefs, unless, by agreement of the two Governments, the continued pleading of the respective case shall be resumed.

(n) It shall not be necessary to present original evidence but all documents hereafter submitted as evidence shall be certified as true and complete copies of the original if they be such. In the event that any particular document filed is not a true and complete copy of the original, that fact shall be so stated in the certificate.

(o) The complete original of any document filed, either in whole or in part, shall be retained in the Agency filing the document and shall be made available for inspection by any authorized representative of the Agent of the other side.

(p) Where the original of any document or other proof is filed at any Government office on either side, and cannot be conveniently withdrawn, and no copy of such document is in the possession of the Agent of the Government desiring to present the same to the Commissioners in support of the allegations set out in his pleadings or briefs, he shall notify the Agent of the other Government in writing of his desire to inspect such document. Should such inspection be refused, then the action taken in response to the request to inspect, together with such reasons as may be assigned for the action taken, shall be reported to the Commissioners and, in turn, to the Umpire mentioned in Clause Fifth of this Protocol, so that due notice thereof may be taken.

Done in duplicate in Mexico, D. F. in the English and Spanish languages this twenty fourth day of the month of April one thousand nine hundred and thirty four.

JOSEPHUS DANIELS [SEAL]
PUIG [SEAL]

AND WHEREAS the said protocol has been ratified on both parts and the ratifications of the two Governments were exchanged at the city of Washington on the first day of February, one thousand nine hundred and thirty-five;

NOW, THEREFORE, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said protocol to be made public to the end that the same may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this first day of February in the year of our Lord one thousand nine hundred and [SEAL] thirty-five, and of the Independence of the United States of America the one hundred and fifty-ninth.

FRANKLIN D ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

EXCHANGE OF NOTES

*The Mexican Chargé d'Affaires ad interim at Washington
(Campos Ortiz) to the Secretary of State (Hull)*

[Translation]

EMBASSY OF MEXICO,
Washington, D. C., February 1, 1935.

MR. SECRETARY:

In conformity with the provision of paragraph (a) of clause six of the protocol relating to claims presented before the General Claims Commission, signed on April 24, 1934, which states: "The time allowed for the completion of the pleadings and briefs shall be 2 years counting from a date hereafter to be agreed upon by the two governments by an exchange of notes, which shall not be later than November 1, 1934" and taking into account that the extension of time granted by the Mexican Government to that of the United States in note No. 6509 of September 26, 1934, expires on the 1st of February, both governments, for the purposes of the clause above mentioned, consider as initiated as of this date and by means of the exchange of these identic notes the period of 2 years to which the said provision of the protocol refers.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

P CAMPOS ORTIZ
Chargé d'Affaires ad interim.

His Excellency
Mr. CORDELL HULL,
Secretary of State,
etc., etc., etc.

*The Secretary of State (Hull) to the Mexican Chargé d'Affaires
ad Interim at Washington (Campos Ortiz)*

DEPARTMENT OF STATE,
Washington, February 1, 1935.

SIR:

In conformity with the provision of Paragraph (a) of Clause Sixth of the Protocol relating to claims presented before the General Claims Commission, signed on April 24, 1934, which states: "The time allowed for the completion of the pleadings and briefs shall be two years counting from a date hereafter to be agreed upon by the two Governments by an exchange of notes, which shall not be later than November 1, 1934," and taking into account that the extension of time granted by the Mexican Government to the Government of the United States in Note No. 6509 of September 26, 1934, expires on the first of February, both Governments, for the purposes of the clause above mentioned, consider as

initiated as of this date and by means of the exchange of these identic notes the period of two years to which the said provision of the Protocol refers.

Accept, Sir, the renewed assurances of my high consideration.

CORDELL HULL

Señor Dr. Don PABLO CAMPOS-ORTIZ

Chargé d'Affaires ad interim of Mexico.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND MEXICO, NOVEMBER 9 AND 12, 1938, AND
APRIL 17 AND 18, 1939¹

*The Secretary of State (Hull) to the Mexican Ambassador
(Castillo Nájera)*

DEPARTMENT OF STATE
WASHINGTON
November 9, 1938.

EXCELLENCY:

I have the honor to acknowledge the receipt of the note addressed by your Government on September 1 to Ambassador Daniels.²

Careful examination of that note discloses no grounds that would justify this Government in modifying the position set forth at length in my notes to you dated July 21 and August 22, 1938.³ My Government must insist that the recognized rules of law and equity require the prompt payment of just compensation for property that may be expropriated. Therefore, inasmuch as my Government remains convinced of the basic soundness of its position, buttressed as it is by law and justice, and in view of the scope and content of our recent conversations, in the course of which you informed me of the policy of your Government and of the desire of the Government of Mexico, which is similar to the desire of the Government of the United States, to settle all difficulties which may arise between the two Governments in a spirit of friendship and of equity, further discussion of the note under reference seems unnecessary.

My Government has a particular desire to safeguard friendship with Mexico not only because Mexico is one of its nearest neighbors but on account of the many ways in which ever improving relations, in the fullest sense, between the two countries could be complementary and mutually beneficial. It has, therefore, spared no effort to arrive at prompt, friendly and satisfactory solutions of problems as they arose. It was in this spirit that last November my Government urged, in accordance with the principle of just compensation, the desirability of a comprehensive agreement providing for the compensation of the American citizens whose properties had been seized by the Mexican Government. It is in that same spirit that I have given every attention to the proposals of your Government which you recently communicated to me. Based upon them, my Government would be willing to agree to the plan proposed hereafter which, if acceptable to your Government, would resolve at once the present controversy, in so far as it relates to compensation for American-owned agrarian properties seized since August 30, 1927, that if continued must seriously impair the friendly relations between the two countries. It is also in

¹Executive Agreement Series No. 158; 53 Stat. 2442.

²See *Compensation for American-Owned Lands Expropriated in Mexico*, Department of State publication 1288, Conference Series 16 (1939), p. 81.

³See *ibid.*, pp. 1 and 15.

this same spirit that I earnestly commend it to the favorable consideration of your Government.

One: Both our Governments are in accord that the values of the American-owned agrarian properties expropriated since August 30, 1927, be determined by a Commission composed of one representative of each of our Governments, and in case of disagreement, by a third person selected by the Permanent Commission with seat at Washington, as established by the so-called Gondra Treaty.

Two: My Government proposes (a) that the two commissioners be appointed by their respective Governments at once; (b) that they hold their first meeting in the City of Mexico on the first day of December 1938; (c) that each Government bear the entire expense of the salaries, maintenance, transportation, and incidentals of its commissioner and his staff and that any expense incurred jointly, as for instance in connection with airplane travel, be shared equally.

Three: My Government believes it important, and understands that your Government is in accord in this regard, that a time limit be established for the completion of the work of the commissioners. It is therefore proposed that the commissioners be instructed that they must complete the determinations of value by not later than May 31, 1939. If during the course of the deliberations of the two commissioners they are unable to reach a common finding upon the matters submitted to them for their joint determination, my Government proposes that the Permanent Commission at Washington be requested to appoint immediately the third commissioner in order that he may resolve the matters upon which the two Governments' commissioners are unable to agree. It is further proposed that in case of disagreement in any particular case, the representative appointed by the Permanent Commission be requested to render his award within not more than two months from the time the case is submitted to him. The salaries and expenses of the third commissioner will be defrayed in equal proportions by the two Governments.

Four: The adequate and effective measure of compensation to be paid in each case shall be determined in the usual manner by taking into consideration, among other pertinent factors, the establishment of the nationality of the claimant, the legitimacy of his title, the just value of the property expropriated, the fair return from the property of which claimant has been deprived between the time of expropriation and the time of receiving compensation, as well as such other facts as in the opinion of the commissioners should be taken into account in reaching a determination as to compensation.

Five: It is my understanding that the Mexican Government will pay the sum of \$1,000,000 United States currency as first payment of the indemnities to be determined by the Commission to which this note refers, and that this payment will be made to the Government of the United States on or before May 31, 1939.

It is my further understanding that immediately subsequent to the determination by the Commission of the final valuation, in

accordance with the procedure indicated in numbered paragraph Four of this note, of American-owned agrarian properties as defined in numbered paragraph One, the two Governments will reach an agreement as to the amounts to be paid to the Government of the United States by the Government of Mexico annually for the account of such claims in the years subsequent to the year 1939. As the basis for such agreement there will be taken into consideration such statement of its ability to pay as may be demonstrated by the Government of Mexico. The Government of Mexico, I understand, agrees that the annual payments to be made by it to the Government of the United States subsequent to the year 1939 for the account of these claims will in no event be less than \$1,000,000 United States currency, and that such payments will be made on June 30 of the corresponding year.

In view of our recent conversations I have every confidence that the foregoing proposals will prove acceptable to Your Excellency's Government. I shall await with interest Your Excellency's response to the suggestions made.

Accept, Excellency, the renewed assurances of my highest consideration.

CORDELL HULL

His Excellency

Señor Dr. Don FRANCISCO CASTILLO NÁJERA,
Ambassador of Mexico.

The Mexican Minister for Foreign Affairs (Hay) to the American Ambassador (Daniels)

[Translation]

MINISTRY FOR FOREIGN AFFAIRS
UNITED MEXICAN STATES
MEXICO

511284

MEXICO, November 12, 1938.

MR. AMBASSADOR:

I have the honor to acknowledge receipt of the note dated November 9, 1938, addressed by His Excellency Secretary of State Cordell Hull to the Ambassador of Mexico in the United States of America, Dr. Francisco Castillo Nájera, in which the Government of Your Excellency, while maintaining its opinion that the recognized principles of law and equity require the immediate payment of just compensation for expropriated properties, makes known its readiness to agree to a plan which, based on the proposals of my Government, may apply to the consideration and payment of agrarian expropriations (*afectaciones*) subsequent to 1927.

The Government of Mexico, in its turn, while reaffirming its conviction that it has not acted contrary to the rules and principles of international law, of justice and equity, by the enactment and application of its agrarian legislation, is in agreement with the plan presented and takes pleasure in recognizing that the sentiments of cordial friendship which unite our two countries

have in the end prevailed over differences of a technical and juridical order.

As was proposed in my note to your Government on August 3 of the current year, my Government agrees that the value of the expropriated lands shall be established by a commission consisting of a representative of each Government, and that cases of disagreement between these representatives shall be decided by a third person designated by the Permanent Commission, established by the Gondra Pact, which has its seat in Washington, notwithstanding the fact that, in this instance, it is not a matter of an investigating commission, an express function assigned that commission in the said pact.

My Government agrees, likewise, in conformity with its original intention, that the representatives of the two Governments shall be immediately designated and that their first meeting shall take place in the City of Mexico on the 1st day of December of the present year. Outlays for emoluments, travel, and other expenditures, both of the representatives and of the persons assisting them in their work, shall be defrayed by the respective Government. The two Governments shall each pay one-half of the expenses incurred jointly.

Likewise, the emoluments which are to be paid to the third person referred to shall be shared equally, as proposed by your Government, by Mexico and the United States.

My Government expressly declares that it agrees that the representatives designated be instructed to the effect that their work of evaluation be concluded in May 1939, and that the cases of disagreement be submitted to the consideration of the third person, who will likewise be requested to render his decision within a period of not more than 2 months, counting from the date on which his intervention has been requested.

The Government of Mexico understands that the commissioners, in proceeding to make the respective evaluation, shall take into account, among other pertinent facts, the establishment of the nationality of the claimant, the legality of his title to enter a claim, and the last fiscal valuation prior to the expropriation.

Respecting the manner of payment of the corresponding indemnifications, my Government will pay the amount of one million dollars in the month of May 1939.

My Government is agreed that, once the representatives fix the amount of the indemnifications, the Governments shall agree upon the annual amount which the Government of Mexico shall pay to that of the United States, in the years subsequent to 1939, on the claims in question. In the determination of the said annual payments, the economic possibilities of Mexico shall be taken into account. My Government agrees, forthwith, that the annual amounts which must be paid to the United States Government shall not be less than one million dollars, United States currency, and, lastly, my Government agrees that the payments shall be made on the 30th day of June of each year.

The Government of Mexico deems it necessary to have it understood that the decisions reached by the representatives designated

shall in no case extend beyond evaluation of the lands expropriated and the modalities of payment of the amount determined; that they shall not constitute a precedent, in any case nor for any reason; neither shall they decide the juridical principles maintained by the two Governments and applicable to the matter in question.

The Government of Mexico is pleased to recognize that, in formalizing this arrangement, it has been able, on the one hand, to show, as was expressed in the note to which I reply, its especial desire to safeguard its friendship with the United States, because of the mutual benefits which this reciprocal sentiment represents for both countries, and to carry out, on the other hand, the mandates of the agrarian legislation, an expression of our traditional policy, which, on being interpreted by the President of the Republic, was supported, formally by the National Legislative Body in the reply given to the message from the Executive by the President of the Congress of the Union at the opening of the period of sessions on September 1, last.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

EDUARDO HAY

His Excellency

Mr. JOSEPHUS DANIELS,

*Ambassador Extraordinary and Plenipotentiary
of the United States of America,
City.*

*The American Chargé d'Affaires ad interim (Boal) to the Mexican
Minister for Foreign Affairs (Hay)*

EMBASSY OF THE UNITED STATES OF AMERICA

No. 3540

MÉXICO, D. F., April 17, 1939

EXCELLENCY:

I have the honor to refer to the exchange of notes of November 9 and November 12, 1938 between Your Excellency's Government and my Government on the subject of agrarian claims.

In view of the very limited time now remaining within the period originally contemplated for the examination and evaluation of all the agrarian claims, it would seem that the period of time for the filing of claims might usefully be extended to July 31, 1939 and the period for the adjudication of claims might be extended to November 30, 1939. It would also seem that both periods might be further extended, if necessary, particularly since, under the provisions of the notes just mentioned, Mexico will obviously have a period of years in which to complete payments.

It would be understood that the extension of time would be without prejudice to any other aspect of the agreement of November 9–November 12, 1938.

Please accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

PIERRE DE L. BOAL
Chargé d'Affaires ad interim

His Excellency
Señor General EDUARDO HAY,
*Minister for Foreign Affairs,
México, D. F.*

*The Mexican Minister for Foreign Affairs (Hay) to the American
Chargé d'Affaires ad interim (Boal)*

[Translation]

MINISTRY FOR FOREIGN AFFAIRS
UNITED MEXICAN STATES
MEXICO

54133

MEXICO, April 18, 1939.

MR. CHARGÉ D'AFFAIRES:

I am replying to your courteous note of the 17th instant, in which you state that—in view of the very limited time now remaining for the examination and evaluation of the agrarian claims of American citizens by the Commissioners of Mexico and the United States in the terms of the agreement concluded by means of the notes exchanged on November 9th and 12th, 1938—you consider that both the period for the presentation of the claims and that for the deciding of them might usefully be extended.

My Government expresses, once more, its known desire that these matters be definitively settled and, animated by such purpose, it accedes, at once, to the request which you make in the note under acknowledgment, and agrees that the period for the filing of claims before the Commissioners of both countries shall be extended to July 31st of this year, and, from this latter date to November 30th next, there be established a period for the deciding of the amount to cover the claims presented.

I avail myself of this opportunity to renew to you the assurances of my very courteous and distinguished consideration.

EDUARDO HAY

PIERRE DE L. BOAL, Esquire,
*Chargé d'Affaires of the
United States of America,
City.*

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND MEXICO, NOVEMBER 19, 1941¹

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a Convention Providing for the Final Adjustment and the Settlement of Certain Unsettled Claims of Nationals of the United States of America and of the United Mexican States, respectively, against the Government of the other country, was concluded and signed by the respective Plenipotentiaries of the two countries at Washington on November 19, 1941, the original of which Convention in the English and Spanish languages, is word for word as follows:

The United States of America and the United Mexican States, being desirous of effecting an amicable, expeditious and final adjustment of certain unsettled claims of the nationals of each country against the Government of the other country, without resort to methods of international arbitration for their adjudication, such as those established in prior agreements, have decided to conclude a Convention for that purpose, and to this end have named as their Plenipotentiaries:

The President of the United States of America:

Mr. Cordell Hull, Secretary of State of the United States of America; and

The President of the United Mexican States:

Dr. Francisco Castillo Nájera, Ambassador Extraordinary and Plenipotentiary of Mexico to the United States of America;

Who, after having communicated to each other their respective full powers, found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

The Government of the United Mexican States agrees to pay, and the Government of the United States of America agrees to accept, the sum of \$40,000,000.00 (forty million dollars, currency of the United States of America), as the balance due from the Government of the United Mexican States in full settlement, liquidation, and satisfaction of the following claims:

(a) All claims filed by the Governments of the United States of America and of the United Mexican States with the General Claims Commission, established by the two countries pursuant to the Convention signed September 8, 1923;²

(b) All agrarian claims of nationals of the United States of America against the Government of the United Mexican States, which arose subsequent to August 30, 1927 and prior to October 7, 1940, including those referred to in the Agreement effected by exchange of notes signed by the Government of the United States

¹ Treaty Series 980; 56 Stat. 1847.

² Treaty Series 678; 43 Stat. 1780.

of America and the Government of the United Mexican States on November 9 and 12, 1938,¹ respectively; and

(c) All other claims of nationals of either country, which arose subsequent to January 1, 1927 and prior to October 7, 1940, and involving international responsibility of either Government towards the other Government as a consequence of damage to, or loss or destruction of, or wrongful interference with the property of the nationals of either country.

ARTICLE II

The Government of the United States of America and the Government of the United Mexican States agree that the following claims are not extinguished in consequence of the stipulations of this Convention:

(a) Claims of nationals of the United States of America against the Government of the United Mexican States, which arose subsequent to August 30, 1927, and are predicated upon acts of authorities of the United Mexican States in relation to petroleum properties, which claims are the subject of a special agreement;

(b) Claims of nationals of the United Mexican States against the Government of the United States of America, which were formally presented to the Government of the United States of America by the Embassy of the United Mexican States in its note number 2705 of May 16, 1941;

(c) Claims of nationals of either country, predicated upon injuries essentially personal, which arose subsequent to January 1, 1927 and prior to the date of the signing of this Convention;

(d) Claims of the nationals of either country, of the character of those included in paragraphs (b) and (c) of Article I of this Convention, which arose subsequent to October 7, 1940 and prior to the date of the signing of this Convention; and

(e) Claims of nationals of the United States of America predicated upon default in the payment of the principal or of interest on bonds issued or guaranteed by the United Mexican States, which were not filed with the Commission established pursuant to the Convention signed September 8, 1923.

The claims included in paragraphs (b), (c), and (d) of this Article will be the subject of future agreements which the two Governments will conclude as soon as possible.

ARTICLE III

The United States of America and the United Mexican States, in virtue of the stipulations of this Convention, reciprocally cancel, renounce, and hereby declare satisfied all claims, of whatsoever nature, of nationals of each country against the Government of the other, which arose prior to the date of the signing of this Convention, whether or not filed, formulated or presented,

¹ Executive Agreement Series 158; 58 Stat. 2442.

formally or informally, to either of the two Governments, except those claims which are included in Article II of this Convention.

The two Governments agree that, with respect to international obligations and rights of each Government towards the other, the stipulations of this Convention supersede the stipulations of the General Claims Convention signed September 8, 1923, and those of the Protocol signed April 24, 1934,¹ which refers to that Convention, and those of the Agrarian Claims Agreement effected by exchange of notes signed November 9 and 12, 1938.

ARTICLE IV

There is credited against the sum of \$40,000,000.00 (forty million dollars, United States currency) mentioned in Article I of this Convention the sum of \$3,000,000.00 (three million dollars, United States currency), the total sum of payments made, prior to the signing of this Convention, to the Government of the United States of America by the Government of the United Mexican States pursuant to the Agreement in relation to agrarian claims, effected by the exchange of notes signed November 9 and 12, 1938. There shall also be credited the additional sum of \$3,000,000.00 (three million dollars, United States currency) which will be paid on the date of the exchange of ratifications of this Convention.

The balance of \$34,000,000.00 (thirty-four million dollars, United States currency) shall be paid by the Government of the United Mexican States to the Government of the United States of America at Washington, in annual instalments, beginning one year after the date of the signing of this Convention, of \$2,500,000.00 (two million, five hundred thousand dollars, United States currency) until the complete liquidation of this debt. The Government of the United Mexican States may, in its discretion, for the purpose of reducing the period for complete liquidation of the balance due, increase the amount of any of the annual instalments, or pay any such instalment or instalments in advance.

In consideration of the stipulations of this Convention it is agreed that the United Mexican States is relieved of the obligation to make further payments pursuant to the provisions of the Agreement in relation to agrarian claims effected by the exchange of notes signed November 9 and 12, 1938.

ARTICLE V

In the event of failure to pay any annual instalment, or instalments, when due, the United Mexican States shall pay interest at the rate of one per centum per annum on the amount of each such instalment, or instalments, from the date when the instalment, or instalments, became due up to the date of the payment.

ARTICLE VI

This Convention shall be ratified and shall become effective

¹ Executive Agreement Series 57; 48 Stat. 1844.

upon the exchange of ratifications which shall take place at Washington as soon as possible.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed and affixed their seals to this Convention.

DONE in duplicate, in English and Spanish, at Washington, this nineteenth day of November, 1941.

[SEAL] CORDELL HULL
[SELLO] F. CASTILLO NÁJERA

AND WHEREAS, the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged at the city of Washington on the second day of April, one thousand nine hundred and forty-two;

NOW, THEREFORE, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of April, in the year of our Lord one thousand nine hundred and forty-
[SEAL] two, and of the Independence of the United States of America the one hundred and sixty-sixth.

FRANKLIN D ROOSEVELT

By the President:

SUMNER WELLES

Acting Secretary of State.

GENERAL MEMORANDUM OPINION OF THE COMMISSION ON TEXAS CATTLE CLAIMS, DECEMBER 30, 1944

TEXAS CATTLE CLAIMS

General Memorandum Opinion of the American Mexican Claims Commission, Established Pursuant to the Settlement of Mexican Claims Act of 1942

NATURE OF CLAIMS

These claims, commonly known as the Texas cattle claims, arose during the period from the close of the American Civil War to about 1878. The principal ground of complaint, as presented by the claimant government, relates to raids from Mexico and thefts of cattle and horses of American citizens in Texas. The claims are 462 in number. The total amount claimed is \$53,275,890.50.

These claims were filed with the General Claims Commission, United States and Mexico, established under the Convention of September 8, 1923, but said Commission made no determination of them. Under the General Claims Protocol of April 24, 1934 Honorable Oscar W. Underwood, Jr., the American Commissioner designated under that Protocol, made an appraisal of them. The vast majority of them were found by him to be entitled to "no award" upon the ground that there was no showing of "complicity or negligence on the part of Mexican authorities."

PETITIONS FOR REVIEW AND JURISDICTION OF COMMISSION

Under the Settlement of Mexican Claims Act of 1942 this Commission is authorized to review appraisals in claims wherein petitions for review are filed pursuant to Section 4 of the said Act. A great number of petitions have been filed with this Commission pursuant to the provisions of the aforesaid Act, praying for review of the said appraisals. The general contention made by the claimants therein is that Commissioner Underwood erred in requiring, in each claim, proof of "complicity or negligence on the part of Mexican authorities," strong insistence being made by them that international liability for the losses claimed is sufficiently imputed to the Mexican Government from the facts relating to the raids in question.

The claims covered herein having arisen under substantially similar circumstances, we have deemed it appropriate to examine the historical background of these claims as found in the records and the facts commonly relied upon by the claimants to establish international responsibility in order to determine the correctness of the aforesaid basic principle of liability applied by Commissioner Underwood in the appraisal of these claims.

This memorandum pertains only to claims properly before the Commission upon review and has no application to the following three classes of the 462 claims: (1) cases in which Commissioner Underwood's appraisals have been accepted; (2) cases in which claimants failed to notify the Commission whether the respective

appraisals were accepted or whether a petition for review would be filed; and (3) cases in which claimants, after notification to the Commission that they intend to file such a petition, fail to do so within the time limit heretofore fixed by the Commission or any extension thereof which may be granted.

PLEADINGS

The basis on which responsibility of the Government of Mexico is predicated is aptly set forth as follows:

The losses were not the result of a succession of isolated raids, but of a continuing condition, covering a period of years, which was created by the open and notorious launching from Mexican territory of numerous bands of organized thieves, who engaged in systematic and continuous raiding upon the residents of Texas. The responsibility of the Government of Mexico is predicated, in general, not only upon the failure of the authorities of that Government to take reasonable measures to prevent the raids, but upon the complicity of certain of such authorities in the raids and in the disposition of the property taken in such raids. (Docket No. 1599 *et al.*, Brief of the United States, p. 2.)

It is also alleged that the respondent government failed to take proper measures to punish wrongdoers.

In computing losses in an individual case the American Agent adopted the following method:

The losses of the respective claimants have been computed by taking the number of cattle belonging to each at the time the raids began, 1868, by adding the normal increase of the herds, as established by indisputable authority hereinafter discussed, by deducting therefrom the number of cattle sold and the normal losses through natural causes, thus leaving the approximate amount of losses from the one known extraordinary cause.

The rate of the "normal increase" of cattle referred to in the statement just quoted is taken at 33 $\frac{1}{3}$ per centum per annum. The cattle for which claim is made are valued at \$10.00 per head (*Ibid.* 288; Docket No. 230, Brief of the United States, p. 77). According to the American Agent, Mexico was liable for all live-stock determined to be missing as the result of the above-mentioned method of computation.

The Mexican Government denies the existence, under international law, of the alleged legal basis of liability. It contends that the loss of cattle may not properly be attributed to raiders from Mexico by a mere showing that they were missing. The Mexican Government maintains that such conclusion would be based on the false assumption that there were no indigenous cattle thieves in Texas. In this connection it calls attention to many extracts from Texas newspapers of the time containing accounts of depredations of Texas bands of cattle thieves in Texas.

The Mexican Government endeavors to show also exportation of great quantities of cattle during the period through the Port of Galveston and transportation of other great quantities to Kansas. An intense drought and a period of cold during that period are said to have caused losses of many cattle. It is also urged that in the roundups ranchers would place their own brands upon unbranded calves accompanying someone else's cows.

In reply to such contentions, the American Government states that losses from normal causes had been taken into account in

its method of computation. It also makes certain analyses of the Mexican contentions relating to weather conditions and exportations with a view to explaining away the aforesaid contentions of the Mexican Government.

NATURE OF RECORD

A very large quantity of material was filed in Docket No. 1599 et al. The memorial covers 49 volumes, the Mexican answer 1 volume, the American brief 6 volumes, and the Mexican reply brief 6 volumes. The record appears to consist largely of summaries of material collected either contemporaneously with, or very shortly after, the period covered by the claims. Such material consists of reports of investigations made by (a) two commissions appointed by the United States Government, one in 1872 and the other in 1875, (b) the Committees of the Congress of the United States, (c) the grand juries of Cameron County, Texas, and of the United States District Court for the Eastern District of Texas, and (d) the Legislature of Texas. The record also contains excerpts from the diplomatic and consular correspondence on this subject. The evidence commented upon below is typical of a vast amount of other similar evidence.

NECESSITY FOR HISTORICAL STATEMENT

The record shows that some losses were caused by direct acts of Mexican authorities under circumstances unquestionably giving rise to an international reclamation. In many cases, however, losses were the result of failure on the part of Mexican authorities to prevent the raids or to punish wrongdoers, and for this reason a general historical statement of the whole series of raids is necessary.

TWO TYPES OF RAIDS

The losses involved in these claims arose out of raids which fall into two general types. One class of raids emanated principally from the State of Tamaulipas and affected the region in Texas lying east of Laredo, between the Rio Grande on the south and the Nueces River on the north; the other, consisted of raids committed by Kickapoo, Lipan, Mescalero and Apache Indians in that region in Texas lying north and northwest of Laredo.

FIRST TYPE: EAST OF LAREDO

With respect to the raids east of Laredo the record shows the following:

TOPOGRAPHY

The region between the Rio Grande and the Nueces River is approximately 300 miles in length and from 100 to 200 miles in width. It consisted of one vast prairie affording pasture for thousands of cattle. There were practically no fences in this

region, and the herds belonging to different owners mingled and were separated only in the annual roundups. The cattle range in Texas was sparsely settled and the ranches were widely separated from one another. The Rio Grande was fordable at practically all seasons of the year and it was bordered by a strip of land covered with chaparral through which raiders could enter the range undetected. The thieves came in singly or in small groups and then congregated at prearranged points and their presence was seldom detected. They then gathered a herd of cattle and proceeded with it across the Rio Grande. Upon returning to Mexico they were immune from pursuit and were permitted to dispose of their plunder openly and without molestation by the Mexican authorities. The ranges bordering on the Texas side of the Rio Grande were practically all owned by Mexicans. Some of them resided in Mexico and practically all of them, either through intimidation or because of their sympathy for the raiders, permitted the thieves to cross their property on entering Texas and in returning with stolen cattle to Mexico.

FREE ZONE

After the Treaty of Guadalupe Hidalgo of 1848 established the Rio Grande as the boundary between the United States and Mexico there were raids by cattle thieves from Tamaulipas into Texas. In 1858, the Acting Governor of Tamaulipas, in violation of the Mexican constitution and as a hostile measure to other Mexican ports of interior, established a zone six miles wide along the entire length of the Tamaulipas border on the Rio Grande, into which cattle could be imported free of duty and, therefore, without the necessity of any official notice as to their arrival or as to their ownership. This "free zone" greatly facilitated the entry into Mexico of cattle stolen in Texas since they could be brought into Mexico with no questions asked as to their source or ownership. The American Commission of 1872 (Robb Commission) concluded that the border troubles were "traceable directly to an unwise system of legislation regulating the commerce of the right bank of the Rio Bravo, which has made that frontier a rendezvous for the lawless, and a base of operation for an illicit traffic with the interior of Mexico and the United States."

CORTINA

The record further shows that prior to the American Civil War one Juan N. Cortina was the leader of an armed band of raiders who for some years terrorized the several Texas counties and lived by banditry. It is believed that during the war between the United States and Mexico he was a soldier in the Mexican Army. In 1859 Cortina, with a large body of armed forces, attacked the City of Brownsville, Texas. There were only about 30 or 40 native Americans there and they were mostly unarmed. It was, therefore, impossible to oppose him. He broke open the jail, liberated the prisoners, and killed the jailer, a constable, and several other persons. He returned to Mexico with his forces and re-

maintained in and about Matamoros publicly and unmolested by the Mexican authorities. After 1859 he conducted hostilities against the people of Texas for several months, committing numerous murders. Early in 1860 his band was routed and driven into Mexico.

According to a letter written by him and published in the *Diario Oficial* of May 15, 1868, at that time he had received an appointment from the Government of Mexico as commander of the Brigade of Tamaulipas. In 1870 he was in command of the Mexican forces on the line of the Rio Grande, while General Palacios was in command at Matamoros. His appointment to such an important military command on the border and the existence of the "free zone" combined to create a condition of lawlessness characterized by numerous wholesale thefts of cattle in Texas and by the perpetration of other crimes in that state.

Immediately after his appointment as commander of the Rio Bravo the raids from Tamaulipas into Texas increased at least tenfold. He was the central figure in the raids following the American Civil War. The raids were conducted openly with the knowledge of the Mexican authorities.

COMMISSION OF 1872

The aforesaid Robb Commission was created under a joint resolution of Congress of May 7, 1872, for the purpose of investigating these Texas depredations. The commission proceeded to Texas where it took testimony of numerous witnesses and assembled other evidence regarding the raids. The following excerpts from its report describe the nature and extent of the operations of the cattle-raiders:

The commissioners feel fully warranted in expressing the opinion that for years past, especially since 1866, and even before, armed bands of Mexicans have continually employed the safe refuge of an adjoining territory and the favorable river frontier to cross from Mexico into Texas, in strong parties, collect and drive away into Mexico unnumbered herds of cattle from this region.

... The butchers of the frontier Mexican towns, the stock dealers, and, in many cases, the heads of the various ranches on the Mexican side, have participated in the profits, encouraged the work, and protected the offenders. The Mexican local authorities, as a rule, civil and military, have been cognizant of these outrages, and have (with one or two honorable exceptions) protected the offenders, defeated with technical objections attempts at recovery of the stolen property, assisted in maintaining bands of thieves, or directly and openly have dealt in the plunder or appropriated it to their personal uses. In all cases coming before these corrupt officials, thoroughly acquainted by personal and official notification and public notoriety of this serious and continual breach of international rights, they have either protected the criminal and shared with him the property stolen, or else have confessed an inability to check the outrages and punish the offenders.

The local authorities of Matamoras [*sic*], Mier, Bagdad, Camargo, and other frontier Mexican towns have been repeatedly notified of these complications; the United States and Mexican military authorities have corresponded thereon; the supreme government of Mexico has been duly apprised of the state of the border by earnest correspondence of United States civil and military officers, transmitted through the American Minister, to which attention is specially called; and in the opinion of the commissioners, with the exception of the tardy recall of General Juan N. Cortina, (in March.

1872) [and he was sent back to Matamoros] no step tending toward an amicable and honest vindication of the Mexican people has been taken; [Italics inserted]

And further on the Commission stated:

The crossing of these bands of Mexicans in small squads into Texas attracts no attention there, for it is within the bounds of the probabilities of the case to estimate the Mexicans as composing at least 80 per cent. of the entire population of the frontier of Western Texas.

GRAND JURIES

In August 1871, the Grand Jury of Cameron County stated in its report to the District Court:

It would appear that the parties engaged in this illicit traffic [cattle stealing by raiders from Mexico] are protected by the authorities of Mexico, from the well-known fact that no attempts are made to arrest the thieves, and that stolen cattle find a ready sale in open market there.

In its report of March 25, 1873, the Federal Grand Jury of the Eastern District of Texas stated:

The evidence submitted justifies the declaration that a depredatory war has existed on the frontier since 1865; that it has been waged by men organized in Mexico, by Mexican soldiers acting under the orders of a Mexican general, and commanded directly by officers of the Mexican army; that the authorities of Mexico, civil and military, have countenanced, aided, and supported these hostile operations; that the robbery of our citizens has been legalized so far as the acts of Mexican officials could legalize murder, robbery, and other criminal outrages; that the markets of Mexico have been used openly, publicly and shamelessly to effect the sale of property robbed from the people of Texas; that Mexican officials, merchants of that and other nationalities, and all classes of Mexicans, have bought and sold cattle, hides, horses, and other property stolen from the people of Texas, and they have done so knowing they had been dishonestly obtained; the customhouse and municipal authorities of Mexico have profited by the piratical acts of Mexican soldiers and highwaymen, and a tax has been levied upon cattle which they knew had been taken by armed bands from the rightful owners; that the people on the Mexican side of the Rio Grande consider and treat the Americans as enemies; they claim the country between the Nueces and the Rio Grande, and express a determination to drive the Americans from it.

MCCOOK

In a report dated April 4, 1872, General McCook, United States Military Commander on the Rio Grande, stated:

The citizens of this Frontier lived in comparative quiet and security before the noted "Cortina raid" in 1859. Since that time cattle stealing has been carried on in increasing and certainly ten fold [*sic*] since the Juarez Government, Commissioned the murderer and bandit, Juan N. Cortina as Brigadier General of the regular Army of Mexico, and placed him in Command of the Mexican Rio Grande frontier.

MEXICAN OFFICIALS

Other Mexican officers than Cortina were implicated in the disposition of stolen cattle. The first alcalde of Matamoros who was also a butcher at that place, Dionysio Cardenas, purchased stolen Texas cattle and herds and they were seen in his corrals. He facilitated the disposition of stolen cattle.

In testifying before the Commission in 1872, General McCook stated with respect to Cortina's complicity in the cattle raids:

After the Mexican Government sent General Juan N. Cortina on the frontier these depredations increased two [ten?] fold and General Miguel Palacios, (Commanding the Plaza of Matamoros, Mexico) told me in an official interview with him at my quarters that he had seen General Cortina's soldiers in uniform driving cattle bearing Texas brands on the public highroads of Mexico . . .

AMERICAN CONSUL

The American Consul at Matamoros, Thomas F. Wilson, testified before the Commission of 1872 as follows:

On August 3rd, 1871, General Palacios called on me at the Consulate personally after receiving the communication and stated that he was aware of these charges against Cortina and also Mexican civil authorities in and about Matamoros; that as Commander of the federal forces of the City of Matamoros he was powerless to prevent these crimes, as long as General Cortina commanded the border outside; that he was ashamed to acknowledge that the Mexican government had sent the chief of thieves and bandits on the frontier, and that he had represented the state of affairs to his government and would transmit my letter with its enclosures and a certificate of the list of Inditements against General Cortina for murder and robbery in the Courts of Brownsville, Texas. On the 7th of August 1872, General Palacios acknowledged the receipt of my official communication, in an official letter in which he stated that he had given an account of the facts I had referred to, to the Supreme Government of the Republic and assuring me that until he received orders from the Supreme Magistrate of the nation, on the subject he would do all in his power to put an end to these criminal acts and that whoever of the authors might be apprehended would be punished in conformity with the laws. I understood General Palacios both in his personal interview and official communication to admit the complicity of General Cortina and some of the local civil authorities in these cattle robberies in Texas, and to give as an excuse for his not being able to stop it, the superior power and influence of General Cortina who was sheltering and protecting these thieves and sharing in the proceeds of the plunder. He always spoke of a portion of General Cortina's separate command, called the "Aigles" (The Eagles) as bandits and robbers.

CORTINA'S FOLLOWERS

On August 16, 1872, Gregorio Villareal testified before the Commission of 1872 that he had been second sergeant in General Cortina's command; that, as such, he had helped to drive Texas cattle to Cortina's ranch, Palito Blanco; that he had heard Cortina telling his subordinates to steal cattle in Texas; that Holguines Brothers, who were notorious cattle thieves, were among the thieves who had delivered cattle to Cortina, and that many of the stolen cattle were sold to the alcalde of Matamoros, Dionysio Cardenas.

MEXICAN OFFICIALS

Muricio Portugal, Chief of Police of Matamoros from January 1869 to June 1871, testified before the same Commission that in March or April 1870 he had apprehended a drove of stolen Texas cattle, 180 in number, and had penned the cattle in the city pen and imprisoned the offenders. He then added:

The next day by order of the Alcalde Trinidad Gonzales Dona, the prisoners were liberated and upon the order of the same judge, I gave the

cattle to Narciso Vela, a soldier of Cortinas who took them off. I know that General Juan N. Cortina afterwards used and disposed of the cattle.

PALACIOS

In a communication to the Acting Adjutant General of the Department of Texas, dated March 19, 1872, General McCook stated: "Colonel Miguel Palacias [*sic*] the Commandant of the City of Matamoros has told me, that he has seen Cortina's Soldiers in uniform driving cattle bearing Texas brands upon the Public roads in Mexico."

On March 10, 1874, the American Consul at Matamoros wrote to the Commander at Fort Brown that General Palacios had "stated in substance that he knew that large numbers of stolen animals were constantly being driven by armed thieves from Texas to Mexico, that these robbers were said to be sheltered and protected on this side by General Cortina, who it was alleged shared in the plunder; that the civil authorities either did not desire to, or were too weak to stop it, and that he could do nothing to prevent these robberies while General Cortina was on this frontier." The Consul then added: "Since then these depredations have continued without abatement, and without the least attempt to restrain them by either the civil or military authorities of this country so far as I know."

AMERICAN CONSUL

In a despatch of March 21, 1874, the said counsel reported to the Department of State as follows:

As General Cortina is the President of the Ayuntamiento—Mayor—of the city, and the police—some of whom are noted criminals—are under his control, and as Col. Cristo, the Military Commander of this city is a partizan and friend of General Cortina, and as the Judge of the Court of the First Instance, who has charge of cases relating to crimes of the character referred to in Col. Meriam's communication, either as regards the arrest and trial of criminals in this Judicial District as [*sic*] their commitment for surrender under the extradition of Hamilton—reported in my Dispatch No. 161 under date of the 10th instant—that he could not act in opposition to General Cortina, as it would more than likely cost him his life to do so, it seemed to me on reflection, that nothing could be gained by sending Col. Meriam's letter to either of these authorities.

It seems to me that these disorders have been greatly encouraged by the Mexican Government in sending General Cortina here in the first instance, and in not having stationed a sufficient military force here after it was found necessary to suspend General Cortina from command, to have checked him, and his followers in their depredations. There has been but about three hundred regular troops stationed on the entire frontier of the state of Tamaulipas during the last two years, and they are under the command of a partizan of General Cortina's who is not a regular officer; and at no time within the last four years, has there been a force regularly stationed on this frontier at all adequate to the service required.

BASES OF LIABILITY

The excerpts quoted above indicate that the authorities, beginning with the commanding general of the district, General Cortina, and under his influence and power, including the judicial and

civil authorities, were directly or indirectly participating in the cattle stealing business and that no punishment whatever was meted out by the Mexican Government to the perpetrators of the numerous crimes. The possession of stolen property in Mexico as well as the bringing of stolen property to Mexico for the purpose of sale were crimes under Mexican law. The failure of the authorities to enforce the criminal laws served to encourage the further continuation of the illicit traffic and shows the acquiescence and complicity of the authorities.

DEPARTMENT OF STATE

The frequency of the raids and the complicity of Mexican officials became the subject of diplomatic protests by the Government of the United States in 1871. In an instruction of March 29, 1871, from the Secretary of State to the American Minister in Mexico City, attention was called to "the frequency of acts of this kind and the virtual impunity of the offenders" and the minister was directed to make "an earnest representation" upon the subject.

AMERICAN CONSUL

The American Consul at Matamoros stated in a letter to General McCook dated August 3, 1871:

In a conversation which I had with General Palacios on the subject, *he admitted the apparent complicity of General Cortina with the robbers, and informed me that he would represent the matter to the Mexican Government, with a view to having General Cortina and his command recalled from the frontier . . . I fully concur with you in the necessity of a prompt suppression of these robberies, and am satisfied it cannot be done while General Cortina holds the position he does in the Mexican army on this border.* [Italic inserted]

ORD

After Cortina's removal in 1872 cattle raids from Tamaulipas diminished. The following statement of General Ord before the Committee on Foreign Affairs of the United States House of Representatives is pertinent in this connection:

The raids on the lower Rio Grande were very numerous in the time of Cortina, but when the Civil War began there between the Cortina faction and the Diaz faction, the raids diminished. So long as Cortina remained on that frontier he was the head man of the wild and lawless people on the border.

CORTINA AFTER REMOVAL IN 1872

Although Cortina had been removed in 1872 as commander of the Mexican forces on the Rio Grande, he continued thereafter to function as an official of the Mexican Government. In a despatch of December 1, 1874, the American Minister to Mexico stated: "General Cortina, I am informed, still holds a commission as General in the Mexican army . . . He is now acting as the Mayor or Chief Municipal Official of the City of Matamoros."

In March 1875 there occurred the famous Nuecestown-Corpus Christi raid, the facts of which are fully set forth in the Memorial

in Docket No. 2231, etc. The raid was organized on Mexican territory and certain of the participants were adherents of General Cortina and some of them were members of the regular armed forces of Mexico.

Cortina's direct connection with the conducted thefts of cattle in Texas is also established by an incident in June 1875 when Cortina sent confederates into Texas to collect a herd of about 250 head of cattle.

AMERICAN PROTESTS

On April 28, 1875, the Secretary of State transmitted to the American Minister to Mexico certain reports from American military authorities regarding depredations in Texas. The American Minister made them the basis of further representations to the Minister of Foreign Affairs and stated that the Government of the United States expected that the Mexican Government would take adequate steps toward preventing raids and that it would do everything possible "to secure the punishment according to law of the perpetrators of the outrages referred to." The American Minister reiterated the complaint against Cortina who still held his commission as General in the Mexican army and who was occupying the office of Mayor of Matamoros and again emphasized the implication of Cortina in the raids.

In a note of June 24, 1875, from the American Minister to the Minister of Foreign Affairs, it was stated that the raids were carried on by "*organized bands of Mexicans, publicly reported to be instigated and equipped, many of them by a general of the Mexican army; that these bands find a safe refuge and protection in Mexico where their plunder is disposed of; and that no punishment is inflicted upon them by the authorities.*" [Italic supplied]

MEASURES BY THE UNITED STATES

With respect to the contention that the United States should have taken measures to prevent losses arising from raids from Mexico it may first be pointed out that the Mexican Government had no right to impose this additional burden on the Government of the United States. The Mexican Government's failure to take proper measures to prevent such raids cannot be excused on the ground that some of the raiders might have been caught in the United States as a result of certain efforts on the part of the United States Government. Furthermore, as noted, the time and place of these raids were of necessity unknown to the United States authorities while the organization of the raiding bands in Mexico was open, notorious, and, with appropriate measures by the Mexican Government, could have been prevented.

Moreover, in order to combat the raids, American forces had to have permission from the Mexican Government to pursue the raiders into Mexico. Such permission was not granted as will hereinafter be shown and without such permission it was not possible for the American Government to take effective steps with respect to the depredations. The border was a big one and

its American side sparsely settled, largely with Mexicans. The Rio Grande, a shallow stream, was easy to cross and fordable at many places. The American forces had, of course, no notice of the particular raiding bands which were organized on the Mexican side of the river. The condition permitted to exist in Mexico might well have caused those bands to feel that they could organize there and publicly dispose of their stolen cattle with impunity.

In this connection attention may be called to an instruction of September 6, 1871, from the Secretary of State to the American Minister in Mexico, in which it was stated:

It appears from this correspondence, copies of which are herewith inclosed, that our military authorities are unable to protect the property of our citizens without the co-operation of the Mexican officers. General Cortinas, the commander of the Mexican troops on the frontier, not only makes no endeavors to prevent the robberies, but is even believed to be in league with the marauders.

The instruction continued as follows:

In view of *these facts* you are hereby instructed to lay the correspondence transmitted to you before the Mexican Government, to urgently demand the recall of General Cortinas from his present post, and to ask for the adoption of such efficient measures as will prevent the recurrence of these marauding incursions. [*Italics supplied.*]

The Mexican Government advised the American Minister on October 28, 1871, that they had appointed a new military commander of the border. Further complaints regarding depredations on the lower Rio Grande were sent by the Secretary of State to the American Minister to Mexico and on March 22, 1872, he was instructed to demand reparation for the outrages. Cortina was not removed until May 1872. As above pointed out, in a despatch of December 1, 1874, the American Minister to Mexico stated that Cortina was still a general in the Mexican Army as well as the Mayor of Matamoros.

At a conference between the American Minister and the Mexican Minister of Foreign Affairs on June 26, 1875, it was pointed out by the former that the raids were confined to the section between Matamoros and Laredo and that if this section could not be garrisoned by the Mexican Government, the Government of the United States could provide a remedy if permission were granted for the regular troops of the United States to follow the raiders across the border when in close pursuit. No such permission was granted. The American Minister referred to the difficulties under which the American army on the frontier labored, that either it had no advance notice of the organization of particular raiding bands on the Mexican side of the river or that the bands were generally able to cross the river, avoid the Army posts, commit their depredations and recross before they could be overtaken by the troops. The Minister added that the frontier line afforded the raiders complete protection and rendered the American army in a great measure powerless to prevent or punish the outlawry.

On July 7, 1875, the American Minister reported to the Department of State that the Mexican Minister for Foreign Affairs had informed him that he had confidence that the arrest and removal

of Cortina would soon cause the outlaws to disperse and cease their depredations.

On April 23, 1877, the American Minister pointed out to the Mexican Minister for Foreign Affairs that the Mexican authorities had not inflicted punishment in a single instance and that, when Cortina had been arrested and had been released on parole and when the death penalty was imposed by the Government of Tamaulipas, the President of Mexico had caused him to be rescued and, according to the public press, had brought him to Mexico City to be acquitted of all blame.

SUMMARY OF RAIDS EAST OF LAREDO

The conclusions drawn from the foregoing facts are as follows:

1. During the period from 1860 to 1875 there existed a regular organized system of cattle stealing with Mexico as the base of operations. The many and frequent raids were not of a sporadic nature but constituted a condition of outlawry which was permanent throughout the said period.

2. The leader in this illegal enterprise, General Cortina, was the highest official of the Mexican Government in that part of the country, and was able to coerce military, civilian and judicial officials to cooperate with him.

3. The Mexican Government was aware of the existing conditions and, although able to do so, neglected to take effective steps in the way of terminating the conditions in question.

4. The Mexican Government admitted that the principal cause of the illegal raids was the presence near the border of its high official, Cortina, and that his arrest would have restored peace in that locality. Notwithstanding such knowledge the Mexican Government delayed for nearly seven years the taking of action necessary to terminate international wrongs.

5. The Mexican authorities had not inflicted punishment on the guilty parties in a single instance. This fact resulted in encouragement of the wrongs if not in actual condonement.

6. The Mexican Government refused to agree to such action by the American authorities as would substitute for the neglect of the Mexican authorities in that respect.

SECOND TYPE: INDIAN RAIDS

With respect to the second class of raids, the Indian depredations, the evidence referred to above in regard to raids east of Laredo is typical of similar evidence contained in the record with respect to the Indian raids.

EVIDENCE

On September 11, 1867, Captain John A. Wilcox, commander at Fort Clark, Texas, informed the Alcalde at Piedras Negras that the authorities not only used no means to prevent the raids but "tacitly aided them [Lipan Indians] in their nefarious aggressions against the residents of this side of the Rio Grande".

In his report of October 16, 1870, Major T. M. Anderson, commander of Fort McIntosh stated: "Between the Kickapoos

therefore and the Mexicans there is the best possible understanding. The Kickapoos never depredate on their side of the river . . .”.

In an affidavit of April 26, 1873, Donald Jackson, Assistant Surgeon of the United States Army, stationed at Fort Clark, stated that, during the preceding seven years, Indians and Mexicans had carried on a general systematic pillaging of cattle and horses and had taken the same into Mexico.

The Commission of 1872 stated with respect to the Indian raids:

The grave responsibility of the Mexican government cannot be overlooked when the continued protection given to marauders by its frontier authorities, the illicit trade with the Indians, carried on by its degraded merchants who are justly suspected of furthering outrages on Texas, and the fact of a friendly shelter being given to the retreating raiders laden with the spoils of a friendly territory are considered. [Italic inserted.]

To the same effect were reports by the American Minister at Mexico City to the Secretary of State. On June 2, 1871, there was transmitted by him to the Department of State a report from the American Consular Agent at Piedras Negras in which it was stated:

A great many of these depredations on the Texas frontier, there is no doubt, are committed by Kickapoo, Lipan, and Mescalero Indians, living off a short distance from the Rio Grande, and, so to speak, under the protection of the Mexican authorities, they sanctioning the sale of stolen animals by these Indians, and allowing citizens to trade with and supply the murdering and marauding savages with ammunition and other things they need for making new raids into the settlements of a friendly country. [Italic inserted.]

On June 26, 1871, the Secretary of State instructed the American Minister to Mexico as follows with respect to the Indian depredations:

The frequency of those raids, the serious losses which they occasion, and the impunity of their perpetrators, merit grave consideration on the part of this government. It is presumed that any remonstrances which may be addressed to the Mexican Government upon the subject would have little or no effect. You may, however, say unofficially that it may become our duty at least to weigh the expediency of pursuing the hostile Indians into Mexico, without the consent of that government, if it shall not adopt measures toward checking the robberies referred to. [Italic inserted.]

In a communication from the American Consul at Monterrey dated August 8, 1871, to the American Minister to Mexico, it was stated that the Indian raids “*are constant, and their starting on them and their returns are always well known in their neighborhood.*” [Italic inserted.]

On February 27, 1872, the American Minister to Mexico was requested again by the Secretary of State to point out that the Mexican Government was “expected to exert its authority toward checking the raids of the robbers adverted to.”

In a further note of March 18, 1872, the American Minister called the attention of the Minister of Foreign Affairs to the “constantly-occurring incursions of the Kickapoo and other Indians of the frontier into the State of Texas . . .” and added:

The American Congress made an appropriation of \$25,000 for that purpose, and last summer agents were sent to the Kickapoo Indians to induce them to

remove to their reservation [in the United States], and to furnish them the means of so doing.

Instead, however, of meeting with any cooperation from the Mexican authorities, the said agents reported that their attempt had been defeated by the opposition of the Mexican authorities, who employed not merely persuasion but bribes, for that purpose. [Italic inserted.]

As a means of checking those raids, it was pointed out in a report from the American Commercial Agent at Piedras Negras to the Secretary of State, dated December 26, 1872, that, if the Mexican Government should allow American troops to cross the boundary when pursuing the Indians into their place of refuge in Mexico, the Indians "once knowing that the Rio Grande is not any longer an impediment to our troops to keep on the pursuit, even across the river . . . very soon would agree to go to a reservation . . . As it is now, it seems natural that the Mexican Government is responsible for what depredations the Indians, harbored in this country, commit in Texas."

On March 8, 1876, the American Minister reported to the Department of State that the Minister of Foreign Affairs of Mexico had informed him that the Government had decided to remove the Indians then at Chihuahua "from the Rio Grande border to Mapimi, a point distant from the frontier where they may be better guarded."

Apparently no such measures were taken in view of the following statement in a report by the American military commander at Fort Clark, Texas, dated March 9, 1877: "Not the slightest attempt is made by the Mexican authorities to control these Indians; they, on the contrary, finding a refuge in the towns when pursued, and a market for their stolen plunder at all times."

The Government of the United States having failed in its endeavors to induce the Mexican Government to fulfil its international obligations with respect to the Indians, the Secretary of War, on June 1, 1877, directed a communication to the General of the United States Armies in which it was stated:

General Ord will at once notify the Mexican authorities along the Texas border, of the great desire of the President to unite with them in efforts to suppress this long continued lawlessness. At the same time he will inform these authorities that if the Government of Mexico shall continue to neglect the duty of suppressing these outrages, that duty will devolve upon this government, and will be performed, even if its performance should render necessary the occasional crossing of the border by our troops.

Thereupon, the Mexican Government ordered General Trevino and the northern division of the Mexican army to "pursue the evildoers" who might commit robberies in the United States and seek to escape into Mexico and to repel with force the entry of the United States troops in Mexico.

Lt. Col. William R. Shafter, United States Army, who was stationed on the upper Rio Grande from 1868 to 1878, testified on January 11, 1878, before the Committee of Foreign Affairs of the House that, in the territory affected by the Indian raids, San Felipe was the upper settlement on the Rio Grande; that beyond that there were no settlements; that the country from Laredo to

San Felipe (on the American side), over 300 miles by the river and 180 miles by the road, was sparsely settled and mostly with Mexicans except at certain points; that from San Felipe up to Ft. Leaton (at least 400 miles by the river) there was not a soul living; that on the Mexican side the country was settled by Mexicans up to San Felipe and that higher up there was no population except Indians. In response to a question as to how many Indians there were in that section he replied:

I suppose that if you count in the Kickapoos, who are tolerably peaceful just now, there may be some 500 of them, but I do not believe that of those Indians who are giving all the trouble there are more than 200 men, and they are divided up into little bands of five, ten, fifteen, and sometimes more families. Many of them cannot live together, as they have to graze their animals and the water is scarce.

In reply to a question as to whether the Government of Mexico seemed to have any control over those Indians he stated:

It does not exercise any control over them; but I think it could do so without any trouble, because these Indians have to be at peace with somebody, inasmuch as they must have some place to go to buy arms, ammunition, and food, and we know that they visit the Mexican frontier towns.

In view of the small number of the Indians, the statement that they could be controlled without any trouble appears to have been justified. And further on he stated:

I think that a thousand or fifteen hundred men would be enough to guard that frontier, because I know that the Mexicans could stop this Indian raiding in twenty days if they wanted to. If these Indians could not get their arms and provisions in Mexico they would have to make peace somewhere at once.

Then in your judgment there is no good reason why the Mexican Government should not protect us from those raids.

No reason in the world.

... They could stop this raiding at once. I know it, and every man on the frontier knows it. It is not an impossible thing, or a difficult thing, for them to do so.

On January 14, 1878, Lt. John L. Bullis, who had been stationed on the Rio Grande for 10 years prior to 1878, testified before the same committee that the civil authorities "never take any action whatever to prevent" the raids. In reply to a question as to whether the Mexican troops were making any bona fide efforts to catch the Indians he answered in the negative and added that "these Indians could be caught within a week," and that it was "a daily occurrence for them to go into Mexican towns and barter stolen stock with Mexicans."

The United States Commercial Agent at Piedras Negras testified before the same committee on January 14, 1878, that "the Mexican authorities never did anything to prevent" the raids.

He added that it was within "the power of the Mexican authorities to stop the raids of Mexicans as well as those of Indians," and that the "Kickapoo Indians living near Santa Rosa are under the supervision of the local authorities of that place, and receive sometimes provisions from them."

SUMMARY OF INDIAN RAIDS

The conclusions drawn from the foregoing facts are as follows:

1. That the Kickapoos and the other Indian tribes freely sold in Mexico stolen Texas cattle.

2. That the Mexican authorities would have had little difficulty in preventing and suppressing the Indian raids, and by knowingly giving the criminals asylum in Mexico, they encouraged them to continue their crimes, upon the basis of which the responsibility for those crimes may properly be charged to the Mexican Government.

3. That the Mexican Government not only failed to take reasonable measures to put an end to the crimes against a friendly neighboring state but placed every obstacle in the attempt by the United States authorities to terminate the difficulty either by removing the Kickapoos back to the United States or by pursuing them into Mexico after their raids upon American territory.

4. That the Mexican Government, in refusing to take steps to suppress the crimes or to permit the United States to suppress them, in failing to remove the Indians from the border territory, in encouraging their profitable traffic in stolen American property, and in granting them immunity, manifested a continuous disregard of its obligations in violation of international law.

UNDERWOOD'S OPINION

Commissioner Underwood in passing upon the 462 so-called Texas cattle claims pointed out that the "supposed liability of the Mexican Government is primarily founded upon an alleged general condition suffered to exist by the Government of Mexico." He found that the alleged general condition was "a real one" but that it did not suffice to establish this general condition as the basis for awards in particular cases. He held that in each case there must be evidence to show facts and circumstances establishing a delinquency for which the Mexican Government could be charged with responsibility under international law; and further that the number of cattle or horses involved in each claim should be shown. Without attempting to give an exclusive list of delinquencies, he held that Mexico would be responsible for the following categories:

1. Refusal of judicial or administrative officers in Mexico to prosecute thieves, or receivers of stolen stock, when requested to do so by the owners of cattle, who pointed out that cattle bearing their brands were held by persons within the jurisdiction.

2. Refusal of such officers to employ the processes of the law for the recovery by the owners of stolen cattle when requested to do so in Mexico by the owners.

3. Delay of such officers to prosecute offenders, or to take steps toward the restoration of stolen cattle, or the making of such illegal or onerous requirements as to be equivalent to a refusal.

4. Appropriation of stolen cattle in Mexico by civil or military officials, retaining the same, or part of the same, for their own benefit.

5. Purchase of stolen cattle by civil or military officials in such circumstances as to show complicity with the thieves, or with receivers of stolen goods.

6. Imposition of illegal taxes upon owners seeking the return of their cattle.

7. Appropriation of stolen cattle by military forces in Mexico.

8. Theft of cattle in Texas by military forces of Mexico.

COMMISSION'S COMMENTS

This Commission, of course, agrees that American losses resulting from the delinquencies just mentioned would give rise to liability on the part of Mexico.

Commissioner Underwood seems to hold also that it is not sufficient for a claimant to prove that during the existence of the general condition in question raiders from Mexico stole his cattle but that he must also prove that in his individual case the Mexican Government could have controlled the raiders or could have punished them through its usual means of repression. With this view the Commission cannot entirely agree for the reasons hereinafter indicated.

It appearing from the record that the raids during the period in question were systematic and continuous and not isolated sporadic incidents; that they were openly and notoriously organized in Mexico; that the Mexican authorities failed to take steps to prevent them or to prevent in Mexico the open traffic in stolen Texas livestock; that, on the contrary, high Mexican Military officials and other officials were implicated in such raids and were profiting therefrom; and that, although the Mexican Government was aware of this condition of affairs and of the nature of the action necessary to put an end to such condition, it neglected, for a period of several years to take the necessary action, it seems clear that the raids which took place during the period in question were made possible by the conduct of the Mexican Government. Each raid was not an isolated raid but was a part of a general lawless condition which, throughout said period, was permanent and, as noted, was made possible by the action of the Mexican authorities. It follows, therefore, in the opinion of this Commission, that, if a claimant proves that his losses were caused by a raid or raids from Mexico during the period in question he will thereby have established liability on the part of the Mexican Government for the same.

The general legal grounds, therefore, on which this Commission holds the Mexican Government liable are: (1) active participation of Mexican officials in the depredations; (2) permitting the use of Mexican territory as a base for wrongful operations against the United States and the citizens thereof, thus encouraging the wrongful acts; (3) negligence, over a long period of years, to prosecute criminals or otherwise to discourage or prevent the raids; and (4) failure to cooperate with the Government of the United States in the matter of terminating the condition in question.

LEGAL PRECEDENTS

That the principles above announced have been recognized in international law is shown by the following quotations:

Vattel, *Law of Nations*, Book II, chap. VI, par. 72, p. 161:

If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation either in its body or its members, he does no less injury to that nation than if he injured it himself.

Burlamaqui, quoted in I Phillimore, *International Law* (1879) 318:

Now it is presumed that a sovereign knows what his subjects openly and frequently commit and as to his power of hindering the evil, this likewise is always presumed, unless the want of it be clearly proved.

VI Moore's *Digest* 791:

The government of a foreign state is liable not only for any injury done by it, or with its permission, to citizens of the United States or their property, but for any such injury which by the exercise of reasonable care it could have averted.

Calvo, *International Law* (5th ed., 1896) section 1274:

When the government knew of the act from which the damage resulted and did not employ sufficient diligence to prevent it or to stop the consequences of it, either with the aid of the means at its disposal or with the means which it could demand of the legislative power, the state will be responsible for voluntary negligence of diligence.

Hall, *International Law* (7th ed., 1917) 227:

If the acts done are undisguisedly open or of common notoriety, the state, when they are of sufficient importance, is obviously responsible for not using proper means to repress them . . .

Triepel, *Droit International et Droit Interne* (1920) 339:

. . . But it follows from this that we must assure the same protection to the legal property of the individual in a foreign country and against which attacks may be made from the territory where our power is exercised. . . . No state is relieved of the necessity of forbidding individuals who are subject to its power to defraud or injure aliens, even aliens who are in foreign countries.

A. Verdross "General Rules of the International Law of Peace," Academy of International Law, *Recueil des Cours* 1929, V, 417:

However, in common international law, this duty of protection is limited to the obligation of every state to suppress all hostile expeditions organized on its own territory and directed from it against the territory of foreign states.

In *Whipperman's* case (III Moore's *Arbitrations* 3039), a claim was presented for damages caused to an American by a raid of Venezuelan Indians outside the territory of Venezuela. The United States-Venezuelan Commission of 1885 rejected the claim on the ground that it had not been proved that the Venezuelan Government had reason to know that the raid was threatened. But the Commissioner added:

A different rule of responsibility applies where the act complained of is only one in a series of similar acts, the repetition, as well as the open and notorious character of which, raises a presumption in favor of knowledge being brought home to the authorities and with it corresponding accountability. (*Ibid.* 3042.)

The hypothetical situation described in the statement just quoted is precisely the one which prevailed in the present claims in which, since 1868, Mexican raids into Texas were open, notorious, and practically continuous over a long period of years and were at all times well known to the Mexican Government through its local and federal officials.

In the *Stringfield* case, Docket No. 2231 and others, before the General Claims Commission, United States and Mexico, the Mexican Agency stated:

But it [the Mexican Agency] does admit that in the remote case which refers to the extreme set out by the Agency of the United States, that is to say: that if it were a case in which the Mexican authorities not only may not have done what it was in their hands to do to prevent the commission of crimes on foreign territory, but in addition may have protected and aided the delinquents in a positive and continuous manner, *there would exist international responsibility.*" [Italics inserted.]

The fact that the losses occurred on the territory of the United States rather than Mexico does not relieve the Mexican Government of responsibility. See *Wipperman's case, supra*. With respect to an incident involving damages within the territory of the United States near the border as a result of the conduct of military operations in Mexico between Mexican federal forces and insurgent troops, a commission created by a joint resolution of Congress, approved August 9, 1912, found that the established Government of Mexico was threatened by the insurgents and that it had a right to fight in self-defense while, on the other hand, the revolutionary party was trying to overthrow it. V Hackworth's *Digest* 676. The Commission stated: "Both parties to the conflict . . . were therefore engaged in a contest about the theoretical right of which, in an international sense, there can be no doubt." However, the Commission did not relieve Mexico of liability for the damages in the United States even though they were caused by military operations in Mexico in which both contesting parties had a right to engage. It was stated:

But when a state in the exercise of its sovereign right of self-defense has been compelled to inflict injuries as incidental thereto upon a neighboring and friendly power, prompt expressions of regret and prompt atonement in so far as money indemnity can atone, are to be expected. *Id.*

And further on the Commission stated:

Mexico herself has impliedly admitted her liability by offering compensation, after its own investigation, in a number of these cases. *Id.*

In the instant claims as a result of the failure of the Mexican authorities to arrest and punish Cortina and the Indian raiders their followers continued to make raids.

It is unnecessary, in the Commission's opinion, further to demonstrate the applicability of the principles of international law which give rise to international responsibility on the part of Mexico for the raids in question.

GENERAL PRINCIPLES AND REQUIREMENTS

While the decision in each claim must necessarily depend on the facts established therein, the following general principles and the following requirements as to proof will be applied by the Commission in determining the merits of individual claims:

1. American citizenship of claimants and predecessors in interest must be established by satisfactory proof.
2. Liability of the Mexican Government exists on the basis of any of the eight categories of delinquencies quoted above from Mr. Underwood's opinion.
3. Evidence must be produced that the loss of livestock was the proximate result of a raid or raids from Mexico. A claimant will

not be entitled to an award if the evidence establishes only that the livestock belonging to him were missing. The evidence must show a causal connection between the acts of raiders from Mexico and the loss in question to justify a pecuniary award. The question as to whether there is causal connection is one fact to be determined by the Commission as trier of the facts in each case.

4. Evidence establishing the presence of claimant's cattle in Mexico will be considered as a basis for making an award therefor only when such evidence is accompanied by satisfactory proof that the presence of such cattle in Mexico is attributable to a raid or raids from Mexico.

5. Claims or parts of claims for losses of prospective increase of livestock will not be allowed.

6. Interest will be allowed from January 1, 1879.

(The claims arose during the period from the close of the American Civil War to about 1878. In some cases there is no evidence as to the exact date when the livestock in question were stolen by raiders from Mexico. Furthermore, the basic theory of liability in these claims is that Mexico is responsible because it allowed a condition of lawlessness, *continuous* until about 1878. In view of these considerations it is proper, in the circumstances, to allow interest from the end of the continuous period the existence of which gave rise to these claims.)

Done at Washington, D. C., December 30, 1944.

EDGAR E. WITT,

Chairman.

SAMUEL M. GOLD,

Commissioner.

CHARLES F. McLAUGHLIN,

Commissioner.

BRIEF HISTORICAL BACKGROUND OF CLAIMS BEFORE THIS COMMISSION

In connection with the accompanying report of the American Mexican Claims Commission to the Secretary of State, it will be of interest to give the following brief outline concerning claims settlements effected by our Government with the Government of Mexico and which were involved in the consideration of claims coming before that Commission.

The General Claims Convention concluded by the Governments of the United States and of Mexico on September 8, 1923, undertook to settle all claims of citizens of either country arising subsequent to July 4, 1868, the date of the last general claims settlement concluded by both Governments, "except those arising from acts incident to the recent revolution". Provision was made therein for the establishment of a three-man commission, known as the General Claims Commission, composed of a representative of each government and a third member to be named by a neutral country to act as presiding commissioner. The claims over which that commission was given jurisdiction are described in Article 1 of that Convention.

Said General Claims Commission functioned from 1924 to 1931, deciding somewhat less than 200 claims and making awards totaling a little more than two and a half million dollars to American claimants. The Commission was not in continuous session, meeting only when a sufficient number of claims had been prepared by the respective Agents of the two Governments and made ready for oral argument. The work of that Commission was suspended in 1931 and was revived under the Agreement of April 24, 1934. Thereunder, each Government designated one Commissioner whose function it was to appraise all the claims, both American and Mexican, filed with the said Commission but not yet disposed of. It was contemplated that after making their respective appraisals, the Commissioners would meet and endeavor to "reconcile" them. The action of the Commissioners in so far as they were in agreement was to constitute a final disposition thereof. A period of about three years was provided for the completion of the work of the two Commissioners. During that period the American and Mexican Agencies also functioned in the preparation of claims for presentation to the Commissioners.

When the two Commissioners filed their report in 1937 it was disclosed that they had reached an agreement only with respect to a relatively small number of claims. With respect to the others, they had either disagreed or failed to reach them for consideration. The agreed appraisals of American claims slightly exceeded two million dollars. The American Commissioner, Honorable Oscar W. Underwood, Jr., thereupon filed with the Department of State his own appraisals of the claims. These are commonly referred to as the "Underwood appraisals".

No further action was taken by the two Governments to effect a disposition of the undetermined claims under said Agreement

of April 24, 1934, until November 19, 1941, when a convention was concluded with Mexico for the settlement of all claims hereinafter referred to.

Before discussing these claims, it is deemed desirable to refer to the Special Mexican Claims Commission which came into existence as a result of the Agreement of April 24, 1934. In this connection it will be noted that Article 1 of the General Claims Commission expressly excepted from the jurisdiction of the General Claims Commission, claims "arising from acts incident to the recent revolutions". These claims, known as "special claims", were originally agreed upon for disposition under a "Special Claims Convention" concluded by the two Governments on September 10, 1923. They were claims of American citizens against the Government of Mexico arising during the so-called "revolutionary period" from November 20, 1910 to May 31, 1920, and in pursuance of the said Special Claims Convention. They were submitted to the United States-Mexican Special Claims Commission. In the eight year period between 1923 to 1931, said Commission decided only 18 cases, disallowing all of them. No further steps looking toward a disposition of "special claims" were taken until April 24, 1934, when the two Governments entered into an agreement for a lump sum settlement of the same. The sum of \$5,448,020.14 therein agreed upon was distributed by the Special Mexican Claims Commission created under the Act of Congress of April 10, 1935. Said Commission was composed of three members appointed by the President of the United States and its work which began on August 23, 1935 was terminated upon the completion of its duties on May 31, 1938.

It is well at this point also to refer to the claims resulting from the agrarian policy in Mexico which was inaugurated about the year 1915 and which continued to be the subject of serious complaints from American nationals. Under this policy agricultural properties in Mexico belonging to American citizens were expropriated by the Mexican Government, for the benefit of its own citizens, without payment of any compensation to the owners.

Extended diplomatic correspondence was conducted by the two Governments with a view to obtaining compensation for American nationals thus affected. By an exchange of notes dated November 9-12, 1938, the Governments agreed to appoint two Commissioners to act jointly in evaluating the American owned properties which had been expropriated since August 31, 1927. Agrarian claims arising prior to that date had previously been filed with the General Claims Commission and were included in the appraisals of Commissioner Underwood, as aforesaid. By agreement between the two Governments, only agrarian claims which were filed on or before July 31, 1939, were to be considered by the two Commissioners under the said 1938 agreement.

Differences in the views of the two Commissioners with respect to the method of evaluating the properties rendered it impossible for them to reach agreements with respect to the disposition of individual claims. Thereupon, at the request of the Department of State, the American Commissioner proceeded to make his own

appraisals of the agrarian claims so filed under the 1938 agreement. The appraisals so made by him came to be known as the "Lawson appraisals."

Coming now to the Claims Convention of November 19, 1941, the United States Government accepted thereunder, the sum of \$40,000,000.00 (payable in instalments) in full settlement of the balance due on all claims of American citizens arising up to October 7, 1940, with the exceptions noted in Article 11 thereof. There was added to that sum the amount of \$533,658.95, appropriated by the Congress to cover the awards by the General Claims Commission with respect to claims of Mexican nationals against the Government of the United States.

The Settlement of Mexican Claims Act of 1942 was enacted to carry out the purposes of the said Claims Convention of November 19, 1941. Thereunder the American Mexican Claims Commission was established and was authorized to consider the categories of claims enumerated in Section 3 of the Act and its subdivisions.

Section 4(a) of the Act also brought within the purview of this Commission the said Underwood and Lawson appraisals. In cases where petitions for review of said appraisals were applied for and granted under provisions of the Act, the Commission made its independent determination thereof. In the cases where reviews were either not applied for or were applied for and denied, the Commission entered awards upon the basis of the appraisals originally made.

The claims encompassed by 3(a) (5) of the Act were special claims originally filed with the General Claims Commission and the Special Claims Commission because of some doubt entertained by claimants upon the question as to whether their claims were of a "general" or "special" nature. Said jurisdictional question had not yet been determined by the General Claims Commission when the Special Claims Commission terminated its work on May 31, 1938, hence they were included in the Settlement of Mexican Claims Act of 1942.

On March 28, 1947, a week before the termination of the American Mexican Claims Commission, the President approved a bill amending the Settlement of Mexican Claims Act of 1942 (Public Law 23, 80th Congress) by conferring jurisdiction upon it to consider.

(7) Any claim decided by the General Claims Commission in which the United States filed a petition for rehearing.

In pursuance of this Act, there was filed with this Commission the claim of the North American Dredging Company of Texas, General Docket No. 1223. This claim had been previously considered by the General Claims Commission and disallowed upon the ground that claimant had not established that it had exhausted its local remedies under the laws of Mexico. This Commission passed upon said claim anew, holding that the requirement for the exhaustion of local remedies was not essential under the General Claims Convention and made an award to claimant.

On April 4, 1947, four years after it had commenced its work, the American Mexican Claims Commission terminated its activities, having decided during that period the claims coming within its jurisdiction under the aforesaid Settlement of Mexican Claims Act of 1942 and the amendment of 1947.

**DECISIONS OF THE COMMISSION
APPRAISAL ACCEPTED**

APPRAISAL ACCEPTED

An appraisal having been made of each of the following claims by a Commissioner designated by the United States within the meaning of Section 4(a) of the Settlement of Mexican Claims Act of 1942, each claimant or his attorney having been notified by registered mail as provided in Section 4(b) of the same Act of the appraisal so made, and the claimant having in each case notified the Commission in writing, within a period of thirty days after the mailing of the notice, that the appraisal was accepted as final and binding, awards on the bases of the respective appraisals were entered pursuant to Section 4(b) of the Act, as follows:

General Docket No. 60. Claimant: Huasteca Petroleum Company. Amount claimed: \$3,324,209.80. Amount awarded: \$1,897,410.35 with interest, as provided in Section 7 of the Act, from June 4, 1918.

General Docket No. 63. Claimant: Huasteca Petroleum Company. Amount claimed: \$1,599,944.63. Amount awarded: \$799,972.31 with interest as provided in Section 7 of the Act, from June 1, 1918.

General Docket No. 90. Claimant: William C. North. Amount claimed: \$4,785.36. Amount awarded: \$4,688.15 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 165. Claimant: R. W. Turner, Jr. Amount claimed: \$2,900.00. Amount awarded: \$2,076.90 with interest, as provided in Section 7 of the Act from September 15, 1916.

General Docket No. 167. Claimant: J. T. Moore. Amount claimed: \$450.00. Amount awarded: \$450.00 with interest, as provided in Section 7 of the Act, from August 30, 1927.

General Docket No. 208. Claimant: Roy Edmund Rankin. Amount claimed: \$25,000.00. Amount awarded: \$15,000.00, without interest.

General Docket No. 219. Claimant: Mrs. Dona Brooks. Amount claimed: \$25,000.00. Amount awarded: \$7,500.00, without interest.

General Docket No. 351. Claimant: Charles Sausele. Amount claimed: \$5,000.00. Amount awarded: \$1,400.00 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 417. Claimant: Missouri Valley Bridge and Iron Company. Amount claimed: \$115,589.36. Amount awarded: \$18,693.67 with interest, as provided in Section 7 of the Act, from December 4, 1914.

General Docket No. 431. Claimant: Antonia Font Howe. Amount claimed: \$1,550.00. Amount awarded: \$1,527.77 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 436. Claimant: Chihuahua Copper Mining Company. Amount claimed: \$300,000.00. Amount awarded: \$32,250.00 with interest, as provided in Section 7 of the Act, from December 31, 1918.

General Docket No. 591. Claimant: Alonzo Fisher. Amount claimed: \$10,000.00. Amount awarded: \$300.00, without interest.

General Docket No. 661 (part). Claimant: The Tabasco Plantation Company. Amount claimed: \$10,318.55. Amount awarded: \$2,999.08 with interest, as provided in Section 7 of the Act, from October 31, 1914, without prejudice to subsequent decision, as authorized by Section 3(a)(5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 668 (part). Claimant: Quimichis Colony. Amount claimed: \$22,550.30. Amount awarded: \$810.27 with interest, as provided in Section 7 of the Act, from May 31, 1916, without prejudice to subsequent decision, as authorized by Section 3(a)(5) of the Act of that part of the claim which has been classified as special and not appraised.

General Docket No. 670 (part). Claimant: John L. Friedman. Amount claimed: \$28,784.81. Amount awarded: \$1,786.91 with interest, as provided in Section 7 of the Act from August 1, 1914, without prejudice to subsequent

decision, as authorized by Section 3 (a) (5) of the Act of that part of the claim which has been classified as special and not appraised.

General Docket No. 676. Claimant: Dr. Ellis MacDougall. Amount claimed: \$6,000.00. Amount awarded: \$150.00, without interest.

General Docket No. 678 (part). Claimant: W. B. Wofford. Amount claimed: \$10,000.00. Amount awarded: \$100.00 with interest, as provided in Section 7 of the Act, from September 21, 1915, without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 754. Claimant: William Vernon Backus. Amount claimed: \$71,438.68. Amount awarded: \$15,768.00 with interest, as provided in Section 7 of the Act, from August 30, 1927, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 1054. Claimant: Roy E. Comfort and the Estate of Solon R. Comfort. Amount claimed: \$25,000.00. Amount awarded: \$3,270.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 1236. Claimant: Standard Oil Company of New Jersey. Amount claimed: \$2,600.00. Award: disallowed.

General Docket No. 1242. Claimant: Lanman & Kemp, Inc. Amount claimed: \$789.49. Amount awarded: \$559.41 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 1362. Claimant: Huasteca Petroleum Company. Amount claimed: \$2,900,000.00. Award: disallowed.

General Docket No. 1703. Claimant: The Standard Oil Company of New Jersey. Amount claimed: \$12,835,802.70. Amount awarded: \$105,258.59 with interest, as provided in Section 7 of the Act, from June 30, 1922.

General Docket No. 1885. Claimant: Anglo-American Provision Company. Amount claimed: \$9,728.29. Amount awarded: \$1,945.66, without interest.

General Docket No. 1952 and 3373. Claimant: L. P. and Juana C. Frisbie. Amount claimed: \$283,996.70. Amount awarded: \$19,730.40 with interest, as provided in Section 7 of the Act, from January 1, 1922.

General Docket No. 1997 (part). Claimant: The Nacozari Railroad Company. Amount claimed: \$4,290.10. Amount awarded: \$4,169.72 with interest, as provided in Section 7 of the Act, from December 31, 1924, without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 2263 (part) and 3386. Claimant: Alex. K. Sessoms and Alexander Kelly Sessoms and others. Amount claimed: \$200,000.00. Amount awarded: To Alexander Kelly Sessoms; Alexander Kelly Sessoms and Pauline Sessoms Burckel, as Executors of the Estate of Lou W. Sessoms (nee Cogdell) deceased; Duncan Angus McRaney, or his estate; Duncan Angus McRaney and Lucy Cornelia McArtan as Executors of the Estate of the Duncan Archibald McArtan, deceased, or their successors; James Thomas Brown, or his estate; William Harold Albritton, or his estate; Mary Leah Albritton as Executrix of the Estate of Edgar T. Albritton, deceased; Joseph Edward McMillan, Henry Denison Bowman, and Jacob Allen Sweet, as their interests may appear, \$93,520.00, without interest.

General Docket No. 2310. Claimant: Percy Welles Shufeldt. Amount claimed: \$594.63. Amount awarded: \$594.63 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 2320. Claimant: A. R. Stovall. Amount claimed: \$25,000.00. Amount awarded: \$9,992.50. (\$2,492.50 thereof consisting of 5,000 pesos, Mexican currency, converted as prescribed in Section 7 of the Act).

General Docket No. 2365. Claimant: Leroy Andrew Woollett. Amount claimed: \$63,030.00. Amount awarded: \$6,303.00, without interest.

General Docket No. 2376. Claimant: Edwin L. Cole. Amount claimed: \$7,500.00. Amount awarded: To the heirs, legatees or successors in interest of Edwin L. Cole, as their interests may appear, \$5,250.00 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 2404. Claimant: Sheldon L. Butler, Robert M. Raymond, Thomas J. Ryder, Christopher R. Butler, Leigh H. Rovzar, Edward R. Atchison, Frederick J. Gainsway, Mabel Butler Gainsway, and Rose S.

Heinemann, as Executrix of the Last Will and Testament of Arthur B. Heinemann, Deceased. Amount claimed: \$1,500,000.00. Amount awarded: To Sheldon L. Butler, Robert M. Raymond, or his estate; Thomas J. Ryder, or his estate; Christopher R. Butler, or his estate; Leigh H. Rovzar, or his estate; Edward R. Atchison, or his estate, Frederick Gainsway, Mabel Butler Gainsway, and Rose S. Heinemann, as Executrix of the Last Will and Testament of Arthur B. Heinemann, as their interests may appear, \$298,350.00 with interest on \$198,900.00 thereof, as provided in Section 7 of the Act, from October 12, 1912.

General Docket No. 2445 (part). Claimant: Hulbert T. E. Beardsley et al. Amount claimed: \$13,000.00. Amount awarded: To Hulbert T. E. Beardsley \$8,000.00, with interest, as provided in Section 7 of the Act, from March 31, 1923.

To Hulbert T. E. Beardsley, John Ewen, Denis F. O'Brien and Mrs. Sarah Greenwood, as their interests may appear, \$5,000.00 with interest, as provided in Section 7 of the Act, from August 12, 1914.

General Docket No. 2524 (part). Claimant: P. Alfredo Vasquez. Amount claimed: \$1,266.00. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2607. Claimant: H. E. Johnson. Amount claimed: \$6,500.00. Amount awarded: To Mrs. Lula L. Johnson, or her estate, Mrs. Ethel Brown, and J. Blocker Johnson, as their interests may appear, \$2,600.00 with interest, as provided in Section 7 of the Act, from December 31, 1914.

General Docket No. 3080. Claimant: Dean S. Goff. Amount claimed: \$47,000.00. Amount awarded: \$2,826.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 3127. Claimant: Parsons Trading Company. Amount claimed: \$2,762.17. Amount awarded: To Parsons Trading Company and Mergenthaler Linotype Company, as their interests may appear, \$2,762.17 with interest, as provided in Section 7 of the Act, from September 30, 1914.

General Docket No. 3156. Claimant: William L. Bagley. Amount claimed: \$15,000.00. Amount awarded: To Mrs. William L. Bagley \$7,500.00, without interest.

General Docket No. 3174. Claimant: Indiana Moulding & Frame Co. Amount claimed: \$531.49. Amount awarded: \$106.30, without interest.

General Docket No. 3213 (part). Claimant: Guadalupe Garcia Leber. Amount claimed: \$14,000.00. Amount awarded: \$3,750.00 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3216. Claimant: Walter C. Thurston. Amount claimed: \$6,800.00. Amount awarded: \$6,800.00, without interest.

General Docket No. 3230. Claimant: Charles H. Grill. Amount claimed: \$16,000.00. Amount awarded: \$990.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 3254. Claimant: National Paper and Type Company. Amount claimed: \$6,010.00. Amount awarded: \$1,202.00, without interest.

General Docket No. 3255. Claimant: National Paper and Type Company. Amount claimed: \$179.25. Amount awarded: \$111.13 with interest, as provided in Section 7 of the Act, from July 31, 1914.

General Docket No. 3256. Claimant: National Paper and Type Company. Amount claimed: \$8,392.99. Amount awarded: \$2,765.97 with interest, as provided in Section 7 of the Act, from December 31, 1915.

General Docket No. 3259. Claimant: Standard Oil Company of New Jersey. Amount claimed: \$39,093.95. Award: disallowed.

General Docket No. 3260. Claimant: Standard Oil Company of New Jersey. Amount claimed: (Duplicated in Dkt. 1702, allowed).

General Docket No. 3276. Claimant: Fred Michel. Amount claimed: \$6,903.51. Amount awarded: \$6,244.68 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3277. Claimant: Fred Michel. Amount claimed: \$1,003.80. Amount awarded: \$537.18 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3280. Claimant: Brock-Hardie Land and Timber Company. Amount claimed: \$5,725.00. Amount awarded: \$2,500.00 with interest, as provided in Section 7 of the Act, from August 16, 1924.

General Docket No. 3294. Claimant: Alfred Matthews. Amount claimed: \$1,275.00. Amount awarded: \$1,229.89 with interest, as provided in Section 7 of the Act, from March 15, 1924.

General Docket No. 3297. Claimant: Joseph J. Aberle. Amount claimed: \$88,445.50. Amount awarded: \$41,387.20 with interest, as provided in Section 7 of the Act, from April 18, 1924.

General Docket No. 3307. Claimant: John L. Friedman. Amount claimed: \$10,384.90. Amount awarded: \$7,207.15, without interest.

General Docket No. 3339. Claimant: Mrs. Edgar M. Wilkins (Elena Zapata Vda. de Wilkins) and Gilbert C. Wilkins. Amount claimed: \$50,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 3351. Claimant: W. D. Beattie. Amount claimed: \$3,000.00. Amount awarded: \$640.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3368. Claimant: Park Look, George Look, and Belle Look. Amount claimed: \$50,000.00. Amount awarded: \$20,007.00 with interest, as provided in Section 7 of the Act, from March 27, 1923.

General Docket No. 3370. Claimant: Henry J. Funk. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3374. Claimant: George H. Joers. Amount claimed: \$15,551.13. Amount awarded: \$3,377.50 with interest from dates of expropriation, as provided in Section 7 of the Act, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 3376. Claimant: John E. Barry. Amount claimed: \$18,000.00. Amount awarded: \$3,880.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3378. Claimant: Mrs. Alda E. Dosch. Amount claimed: \$700.00. Amount awarded: \$250.00 with interest, as provided in Section 7 of the Act, from September 22, 1925.

General Docket No. 3385. Claimant: William C. Nichols. Amount claimed: \$88,819.00. Amount awarded: \$5,376.00 with interest, as provided in Section 7 of the Act, from October 13, 1924.

General Docket No. 3392. Claimant: San Nicholas Plantation Company. Amount claimed: \$780.00. Amount awarded: \$780.00 with interest, as provided in Section 7 of the Act, from April 24, 1926.

General Docket No. 3393. Claimant: Everts W. Storms. Amount claimed: \$6,240.00. Amount awarded: \$1,260.00 with interest, as provided in Section 7 of the Act, from July 16, 1927.

General Docket No. 3412. Claimant: Cordelia Motter Scriven. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3422 (3342). Claimant: Mrs. J. M. Molz. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3433. Claimant: W. H. Weaver. Amount claimed: \$6,000.00. Amount awarded: \$1,296.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3502. Claimant: Della Swim. Amount claimed: \$12,274.50. Amount awarded: \$2,720.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3506. Claimant: George W. Graff. Amount claimed: \$61,500.00. Amount awarded: \$11,264.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3545 (3557). Claimant: Kate O'Brien. Amount claimed: \$2,062.50. Amount awarded: \$440.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3548. Claimant: Fred L. Morris. Amount claimed: \$60,000.00. Amount awarded: \$27,484.00 with interest, as provided in Section 7 of the Act, from December 30, 1926.

General Docket No. 3553. Claimant: Mrs. Antonia Garcia Idrogo. Amount claimed: \$25,000.00. Amount awarded: \$6,000, without interest.

General Docket No. 3562. Claimant: Hiram N. Fones. Amount claimed: \$6,000.00. Amount awarded: \$1,296.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3565. Claimant: Wilda M. Smith, Executrix of the Estate of John F. Smith. Amount claimed: \$1,682.94. Amount awarded: \$303.28 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3581. Claimant: E. B. Welch. Amount claimed: \$32,302.54. Amount awarded: \$1,341.15 with interest, as provided in Section 7 of the Act, from June 28, 1926.

Agrarian Docket No. 2. Claimant: Mae Dunne Narro. Amount claimed: \$41,622.85. Amount awarded: \$7,384.00 with interest, as provided in Section 7 of the Act, from June 23, 1937.

Agrarian Docket No. 3. Claimant: James W. English. Amount claimed: \$65,092.17. Amount awarded: \$52,924.90 with interest, as provided in Section 7 of the Act, from November 5, 1936.

Agrarian Docket No. 4. Claimant: Thelma A. English. Amount claimed: \$73,917.12. Amount awarded: \$67,997.12 with interest, as provided in Section 7 of the Act, from November 5, 1936.

Agrarian Docket No. 8. Claimant: Hacienda Ramona Company. Amount claimed: \$74,197.00. Amount awarded: \$33,803.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 10. Claimant: Malcolm C. Little. Amount claimed: \$59,400.00. Amount awarded: \$33,465.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 15. Claimant: Asa J. Brunk and Benjamin F. Brunk, Jr. Amount claimed: \$71,968.00. Amount awarded: \$32,676.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Asa J. Brunk, \$16,338.00; Benjamin F. Brunk, Jr., \$16,338.00.

Agrarian Docket No. 24. Claimant: Carmen Zuloaga de Kraft. Amount claimed: \$113,878.04. Amount awarded: To Carmen Zuloaga de Kraft the principal sum of \$54,340.00 with interest from dates of expropriation as provided in Section 7 of the Act.

Agrarian Docket No. 26. Claimant: Aurora Cuesta de Lake. Amount claimed: \$16,875.00. Amount awarded: \$2,662.00 with interest, as provided in Section 7 of the Act, from August 3, 1935.

Agrarian Docket No. 28. Claimant: Frederick M. Newton. Amount claimed: \$23,672.00. Amount awarded: \$20,010.00 with interest from dates of expropriation, as provided in Section 7 of the Act.

Agrarian Docket No. 29. Claimant: Raymond V. Hess. Amount claimed: \$22,824.31. Amount awarded: \$5,094.00 with interest, as provided in Section 7 of the Act, from July 8, 1936.

Agrarian Docket No. 32. Claimant: Manuela M. de Hibler. Amount claimed: \$27,384.08. Amount awarded: \$14,322.00 with interest from dates of expropriation, as provided in Section 7 of the Act.

Agrarian Docket No. 36. Claimant: John L. Friedman. Amount claimed: \$5,628.67. Amount awarded: \$770.00 with interest, as provided in Section 7 of the Act, from February 1, 1930.

Agrarian Docket No. 40. Claimant: Jameson Larimore, Individually and as Executor of the Estate of Clay Larimore. Amount claimed: \$157,665.00. Amount awarded: \$78,698.35 with interest, as provided in Section 7 of the Act from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Jameson Larimore, Individually, \$28,768.94; Jameson Larimore, as Executor of the Estate of Clay Larimore, \$49,929.41.

Agrarian Docket No. 41. Claimant: Estate of Lewis Lamm. Amount claimed: \$106,038.63. Amount awarded: \$56,117.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 43. Claimant: Estate of Lewis Lamm. Amount claimed: \$188,620.18. Amount awarded: \$81,305.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 50. Claimant: J. Paul Ginther. Amount claimed: \$41,291.66. Amount awarded: \$28,624.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 51. Claimant: Herbert T. Nichols. Amount claimed: \$22,233.00. Amount awarded: \$11,212.00 with interest, as provided in Section 7 of the Act, from July 10, 1930.

Agrarian Docket No. 53. Claimant: Dixie R. Reid and Joe M. Reid. Amount claimed: \$65,629.42. Amount awarded: \$18,478.00 with interest, from dates of expropriation as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Dixie R. Reid, \$12,319.00; Joe M. Reid, \$6,159.00.

Agrarian Docket No. 57. Claimant: Raymond R. Midgett. Amount claimed: \$75,519.67. Amount awarded: \$62,902.50 with interest, as provided in Section 7 of the Act, from October 7, 1936.

Agrarian Docket No. 59. Claimant: Trustees of the Washington Acapulco Company. Amount claimed: \$65,561.40. Amount awarded: \$29,326.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 61. Claimant: William Saenger. Amount claimed: \$44,098.22. Amount awarded: \$27,723.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 63. Claimant: John L. Case. Amount claimed: \$90,500.00. Amount awarded: \$47,316.00 with interest, as provided in Section 7 of the Act, from September 21, 1938.

Agrarian Docket No. 64. Claimant: Hugh B. Evans, individually, and Frank M. Frisby as Executor of the Estate of Ezra H. Frisby. Amount claimed: \$201,451.00. Amount awarded: \$45,032.00 with interest, from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Hugh B. Evans, or his estate, \$17,373.00; Frank M. Frisby as Executor of the Estate of Ezra H. Frisby, \$27,659.00.

Agrarian Docket No. 70. Claimant: James H. Powers. Amount claimed: \$16,277.10. Amount awarded: \$7,927.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 75. Claimant: William Woodward. Amount claimed: \$125,000.00. Amount awarded: \$53,240.00 with interest, as provided in Section 7 of the Act, from January 29, 1936.

Agrarian Docket No. 77. Claimant: Charles F. O'Brien Company. Amount claimed: \$12,020.00. Amount awarded: \$7,887.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 80. Claimant: Franklin Curtiss Poore. Amount claimed: \$43,544.03. Amount awarded: \$15,831.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 81. Claimant: Magnolia Petroleum Company. Amount claimed: \$15,415.00. Amount awarded: \$11,490.00 with interest, as provided in Section 7 of the Act, from April 9, 1934.

Agrarian Docket No. 86. Claimant: Edith P. Giroux. Amount claimed: \$26,172.00. Amount awarded: \$13,944.00 with interest, as provided in Section 7 of the Act, from October 20, 1937.

Agrarian Docket No. 90. Claimant: Harloe H. Hamilton, Teresa C. Hamilton, James A. Hamilton, and Mrs. C. A. Harrold. Amount claimed: \$211,291.67. Amount awarded: \$54,502.12 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Harloe H. Hamilton, \$32,832.60; Teresa C. Hamilton, \$10,287.55; James A. Hamilton, \$437.77; Mrs. C. A. Harrold, \$10,944.20.

Agrarian Docket No. 103. Claimant: Richard H. Goodell. Amount claimed: \$322,613.83. Amount awarded: \$112,819.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 106. Claimant: William C. Nichols. Amount claimed: \$94,530.00. Amount awarded: \$3,444.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 107. Claimant: Quimichis Colony. Amount claimed: \$283,806.18. Amount awarded: \$201,955.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 113. Claimant: Joseph L. Fox. Amount claimed: \$134,213.00. Amount awarded: \$90,021.00 with interest, as provided in Section 7 of the Act, from October 20, 1937.

Agrarian Docket No. 115. Claimant: William B. Carroll. Amount claimed: \$37,653.00. Amount awarded: \$22,172.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 122. Claimant: Kona S. Reeder. Amount claimed: \$636,709.72. Amount awarded: \$217,771.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 125. Claimant: Joseph W. Montgomery, George H. Laiser, and Louis C. McKinney. Amount claimed: \$1,042,331.00. Amount awarded: \$149,739.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 126. Claimant: Alfred B. Lyon. Amount claimed: \$7,706.53. Amount awarded: \$4,775.00 with interest, as provided in Section 7 of the Act, from April 2, 1934.

Agrarian Docket No. 130. Claimant: San Antonio Plantation Company. Amount claimed: \$5,500.00. Amount awarded: \$775.00 with interest, as provided in Section 7 of the Act, from July 23, 1934.

Agrarian Docket No. 133. Claimant: Mrs. Josefina G. de Haley. Amount claimed: \$345,800.00. Amount awarded: \$11,972.00 with interest, as provided in Section 7 of the Act, from July 22, 1936.

Agrarian Docket No. 136. Claimant: W. R. Grace and Company. Amount claimed: \$443,991.00. Amount awarded: \$206,550.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 149. Claimant: Seymour Jones. Amount claimed: \$22,025.00. Amount awarded: \$13,113.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 151. Claimant: St. Paul Tropical Development Company. Amount claimed: \$150,000.00. Amount awarded: \$1,479.00 with interest, as provided in Section 7 of the Act, from August 12, 1936.

Agrarian Docket No. 152. Claimant: Mexican Realty Company. Amount claimed: \$75,513.00. Amount awarded: \$9,030.00 with interest, as provided in Section 7 of the Act, from October 6, 1933.

Agrarian Docket No. 153. Claimant: Ismaela A. de Carrillo. Amount claimed: \$187,565.00. Amount awarded: \$16,454.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 154. Claimant: Kathryn Nares, Robert C. Gillis, R. Stanley Dollar, Anglo California National Bank of San Francisco, Herbert Fleishhacker, Mortimer Fleishhacker, W. M. L. Fiske, Harold S. Chase, and Patrick Cudahy Family Company. Amount claimed: \$239,391.00. Amount awarded: \$191,386.00 with interest, as provided in Section 7 of the Act, from June 9, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: Kathryn Nares, \$2,545.43; Robert C. Gillis, \$10,430.54; R. Stanley Dollar, \$13,416.16; Anglo California National Bank of San Francisco, \$29,664.83; Herbert Fleishhacker, \$31,626.54; Mortimer Fleishhacker, \$31,626.54; W. M. L. Fiske, or his estate, \$41,894.40; Harold S. Chase, \$9,358.77; Patrick Cudahy Family Company, \$20,822.79.

Agrarian Docket No. 157. Claimant: A. B. McConnell, on behalf of the Estate of Charles Harding. Amount claimed: \$71,420.42. Amount awarded: \$19,877.00 with interest, as provided in Section 7 of the Act, from October 6, 1937.

Agrarian Docket No. 158. Claimant: Edwin Chamberlain. Amount claimed: \$5,330.00. Amount awarded: \$2,175.00 with interest, as provided in Section 7 of the Act, from August 12, 1938.

Agrarian Docket No. 169. Claimant: Ethel Clare McCurdy. Amount claimed: \$50,420.00. Amount awarded: \$7,735.00 with interest, as provided in Section 7 of the Act, from November 12, 1935.

Agrarian Docket No. 171. Claimant: San Jose Plantation Company. Amount claimed: \$31,380.00. Amount awarded: \$18,732.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 177. Claimant: San Nicholas Plantation Company. Amount claimed: \$102,035.33. Amount awarded: \$35,266.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 180. Claimant: Herbert A. Wheeler. Amount claimed: \$1,337.38. Amount awarded: \$917.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 182. Claimant: Title Insurance and Trust Company as Trustee of the Estate of Fred F. Wheeler. Amount claimed: \$12,593.70. Amount awarded: \$8,634.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 190. Claimant: Southern Pacific Company. Amount claimed: \$114,890.79. Amount awarded: \$102,993.77 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 202. Claimant: Guaranty Trust Company of New York as Trustee for the Bondholders of the Potrero Sugar Company, Inc. Amount claimed: \$529,134.07. Amount awarded: \$232,002.00 with interest, as provided in Section 7 of the Act, from May 6, 1937.

Agrarian Docket No. 211. Claimant: Harvey E. Abbott for himself and his wife, Florence Abbott, and as Executor of the Estate of Ed Ingram. Amount claimed: \$73,815.70. Amount awarded: \$21,266.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Harvey E. Abbott, \$6,076.00; Florence E. Abbott, \$607.60; Estate of Ed Ingram, \$14,582.40.

Agrarian Docket No. 227. Claimant: George Tays. Amount claimed: \$5,633.80. Amount awarded: \$4,366.00 with interest, as provided in Section 7 of the Act, from January 1, 1935.

Agrarian Docket No. 228. Claimant: Harlinda Tays Dunn. Amount claimed: \$5,953.85. Amount awarded: \$1,260.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 232. Claimant: Mae Gephart. Amount claimed: \$6,010.00. Amount awarded: \$6,010.00 with interest, as provided in Section 7 of the Act, from September 21, 1938.

Agrarian Docket No. 242. Claimant: John L. Friedman. Amount claimed: \$3,186.00. Amount awarded: \$1,104.00 with interest, as provided in Section 7 of the Act, from December 17, 1936.

Agrarian Docket No. 248. Claimant: Maria Antonieta Esteva de Bergman. Amount claimed \$44,999.69. Amount awarded: \$6,473.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 252. Claimant: Mrs. Lawrence L. Schultz and Dolores Ortigosa viuda de Damm as Guardian of Floria Castanola. Amount claimed: \$20,318.76. Amount awarded: \$1,640.00 with interest, as provided in Section 7 of the Act, from June 10, 1936.

The interests of the respective claimants in the principal sum herein awarded are as follows: Mrs. Lawrence L. Schultz, \$1,150.00; Dolores Ortigosa viuda de Damm as Guardian of Gloria Castanola, \$490.00.

Agrarian Docket No. 258. Claimant: Sinaloa Land and Water Company, Ltd. Amount claimed: \$2,962,426.90. Amount awarded: \$56,230.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

NO RESPONSE TO APPRAISAL NOTICE

NO RESPONSE TO APPRAISAL NOTICE

An appraisal having been made of each of the following claims by a Commissioner designated by the United States within the meaning of Section 4(a) of the Settlement of Mexican Claims Act of 1942, each claimant or his attorney having been notified by registered mail as provided in Section 4(b) of the same Act of the appraisal so made, and the claimant having in each case failed to notify the Commission in writing that a petition for review would be filed as provided in subsection (c) of Section 4 of the same Act, awards on the bases of the respective appraisals were entered pursuant to Section 4(b) of the Act, as follows:

General Docket No. 2. Claimant: William P. Maloney, Individually and as Trustee for Joseph T. McCaddon and for Charles Potter Rogers and Oliver Clinton Carpenter as Liquidating Partners for the Firm of Holmes, Rogers and Carpenter. Amount claimed: \$100,000.00. Amount awarded: \$6,666.66 with interest, as provided in Section 7 of the Act, from August 12, 1914.

General Docket No. 9. Claimant: Charles Samuel Moore. Amount claimed: \$48,777.75. Amount awarded: \$7,673.00 with interest, as provided in Section 7 of the Act, from August 15, 1922.

General Docket No. 16. Claimant: Jairus Elijah Hileman. Amount claimed: \$6,592.09. Amount awarded: \$1,279.76 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 26 (part). Claimant: John E. Carnahan and Lizzette G. Robinson, Rose Robinson Lewis, Beulah Robinson Lewis, and E. L. Robinson in their own right and as executors of the Estate of John S. Robinson, Deceased. Amount claimed: \$98,890.98. Amount awarded: \$28,022.50 with interest, as provided in Section 7 of the Act, from August 24, 1914, without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 30. Claimant: The Vest Live Stock Company. Amount claimed: \$160,000.00. Amount awarded: \$10,000.00, without interest, and without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act of that part of the claim which has been classified as special and not appraised.

General Docket No. 33. Claimant: R. L. Stevenson and W. W. McDaniel. Amount claimed: \$988.52. Amount awarded: \$602.84, without interest.

The interests of the respective claimants in the principal sum herein awarded are as follows: R. L. Stevenson, \$301.42; W. W. McDaniel, \$301.42.

General Docket No. 34. Claimant: Beshara A. Hamati, surviving partner of Hamati Brothers. Amount claimed: \$17,664.93. Amount awarded: \$3,532.99 without interest.

General Docket No. 52. Claimant: Globe Cotton Oil Mills. Amount claimed: \$300,000.00. Award: disallowed.

General Docket No. 55. Claimant: Quaker City Rubber Company. Amount claimed: \$2,388.17. Amount awarded: \$477.63, without interest.

General Docket No. 59. Claimant: Mexican Asphalt Paving & Construction Co. Amount claimed: \$340,981.38. Amount awarded: \$296,359.70 with interest, as provided in Section 7 of the Act, from January 1, 1915.

General Docket No. 61 (part). Claimant: Motzorongo Company. Amount claimed: \$27,020.47. Award: disallowed.

That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 94 and 3391. Claimant: Cargill Lumber Company. Amount claimed: \$5,101,911.92. Amount awarded: \$642,722.45 with interest, as provided in Section 7 of the Act, from November 23, 1922.

General Docket No. 95. Claimant: Frank S. Brackett. Amount claimed:

\$3,144.17. Amount awarded: **\$1,572.09** with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 98 (part). Claimant: Ferdinand Ephriam. Amount claimed: **\$42,404,620.00.** Award: disallowed.

That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 103. Claimant: G. D. Fitzsimmons. Amount claimed: **\$5,550.17.** Amount awarded: **\$5,163.04** with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 104. Claimant: James Washington Winters. Amount claimed: **\$250,000.00.** Award: disallowed.

General Docket No. 106 (part). Claimant: The Laredo Electric and Railway Company. Amount claimed: **\$1,819.55.** Amount awarded: **\$1,819.11** with interest from dates of losses, as provided in Section 7 of the Act, without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 120. Claimant: Young and Glenn, Incorporated. Amount claimed: **\$3,695.19.** Amount awarded: **\$739.04,** without interest.

General Docket No. 133. Claimant: Mrs. Maria G. Lecroy et al. Amount claimed: **\$150,000.00.** Amount awarded: **\$17,500.00,** without interest.

The interests of the respective claimants in the principal sum herein awarded are as follows: Estate of George W. Lecroy, **\$10,000.00;** Mrs. Maria G. Lecroy, **\$2,500.00;** Albert B. Lecroy, **\$2,500.00;** Robert E. Lecroy, **\$2,500.00.**

General Docket No. 147. Claimant: Edward Herbert Thompson. Amount claimed: **\$175,000.00.** Amount awarded: **\$7,500.00,** without interest.

General Docket No. 163. Claimant: Joseph M. Proskauer as assignee for the benefit of creditors of Adolph Vietor. Amount claimed: **\$4,000,000.00.** Amount awarded: **\$257,197.50** with interest, as provided in Section 7 of the Act, from June 12, 1913.

General Docket No. 186. Claimant: Mrs. Mary Peck Hull. Amount claimed: **\$330,754.42.** Amount awarded: **\$150,000.00,** without interest.

General Docket No. 229. Claimant: Martha S. Byler, Administratrix. Estate of Rufus A. Byler. Amount claimed: **\$25,000.00.** Award: disallowed.

General Docket No. 238. Claimant: Charles H. Anthony, Admr., Estate of Arthur Evans, deceased. Amount claimed: **\$59,500.00.** Award disallowed.

General Docket No. 639 (part). Claimant: George Avery, Ernest E. Bennett, Abram C. Brown, Charles F. Dearborn, Abraham L. Fast, John W. Finley, Charles H. Fry, Benjamin F. Fuller, John M. Gaines, Peter Georgeson, C. L. Gillett, W. F. Gillett, William A. Grover, George Gunderson, Carrie B. Hackleman, Anson Hamilton, Eustace Harman, Ida M. Harper, James Heatley, Raymond Henderson, James A. Hibberd, John E. High, George G. Hussey, Grace Hussey, John C. Hussey, Calvin Iams, William E. Isbester, Edith Jackson, James A. Jasper, Ralph Jasper, Hattie W. Junker, James Kaproth, Lewis I. Keep, Robert F. Kingsley, John Kitch, George Lawrence, Francis J. Litchkey, Jose N. Lerona, Chris G. Marcus, Margaret E. Miller, John S. McClure, E. Holtby Myers, Samuel J. Nevins, Bird E. Nosler, Edwin L. Olden, William M. Orrick, Dora Osborne, Drury P. Osborne, Harcourt W. and Nannie N. Peck, Clyde Reynolds, John T. Rutter, Walter R. Sampson, Lula Sanderson (Sanders) Moses Schaltter (Schlatter), O. M. Schmidt, Milton L. Sevier, Mary E. Stratton, C. N. Tello, Sidney D. Ulroy, Isaac (J.) W. Van Dorin, Alva Van Horn, Allen L. Weaver, George T. Wellcome, Henry S. Whitaker, Lois Whitney, Howard B. Winchester, Charles G. Whitman. Amount claimed: **\$743,529.14.** Award: disallowed.

General Docket No. 252. Claimant: Oscar B. Springston. Amount claimed: **\$785.00.** Amount awarded: **\$362.50,** without interest.

General Docket No. 269. Claimant: Roger B. Case. Amount claimed: **\$20,840.00.** Amount awarded: **\$6,895.00** without interest.

General Docket No. 285. Claimant: Goodyear Tire and Rubber Company. Amount claimed: **\$220,722.00.** Amount awarded: **\$169,482.00** with interest, as provided in Section 7 of the Act, from June 14, 1914.

General Docket No. 288. Claimant: George Grace. Amount claimed: **\$6,200.00.** Award: disallowed.

General Docket No. 337. Claimant: James Tobin and Belle A. Taggart de Tobin. Amount claimed: \$535.81. Amount awarded: \$534.20 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 347. Claimant: E. C. Faris and William C. North. Amount claimed: \$15,150.00. Amount awarded: \$1,818.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 386. Claimant: G. M. Black, W. J. Black, Mrs. Lucretia Major, Julia Black, Emmeline Black Miller, Ethel Black Rogers and Mary Anna Black Sherman. Amount claimed: \$50,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 388. Claimant: B. F. Moats. Amount claimed: \$6,200.00. Award: disallowed.

General Docket No. 391. Claimant: Edward C. Kennedy et al. Amount claimed: \$175,100.00. Amount awarded: \$10,530.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

The interests of the respective claimants in the principal sum herein awarded are as follows: Edward C. Kennedy, \$4,224.00; Annie Ethel Kennedy, \$4,716.00; Willard T. Kennedy, \$1,590.00.

General Docket No. 393. Claimant: Barclay & Co. Amount claimed: \$13,759.54. Award: disallowed.

General Docket No. 396 (part). Claimant: Zacatecas Mining and Metallurgical Company. Amount claimed: \$10,000.00. Award: disallowed.

That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3 (a) (5) of the Act of that part of the claim which has been classified as Special and not appraised.

General Docket No. 403. Claimant: Agua Buena Sugar Company. Amount claimed: \$107,822.70. Amount awarded: \$3,675.00 with interest, as provided in Section 7 of the Act, from August 30, 1927.

General Docket No. 408. Claimant: Thomas K. Mathewson. Amount claimed: \$25,000.00. Amount awarded: \$10,934.00 with interest as provided in Section 7 of the Act, from October 1, 1923.

General Docket No. 418 (part). Claimant: Jacob E. Touché. Amount claimed: \$42,500.00. Award: disallowed.

That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 422. Claimant: Atlantic Fruit Company et al. Amount claimed: \$15,000.00. Amount awarded: \$9,000.00 with interest, as provided in Section 7 of the Act, from October 19, 1915.

General Docket No. 429 and 3567 (part). Claimant: E. A. Goff. Amount claimed: \$6,040.00. Amount awarded: \$1,700.00 with interest, as provided in Section 7 of the Act, from August 30, 1927, and without prejudice to any claims which may have accrued subsequent to August 30, 1927, and without prejudice to subsequent decision as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 437. Claimant: Virginia Pernet King or Potrero Sugar Company. Amount claimed: \$39,000.00. Amount awarded: \$6,616.30 with interest, as provided in Section 7 of the Act, from January 31, 1918.

General Docket No. 443 and 3416. Claimant: Robert F. Willy. Amount claimed: \$16,585.00. Amount awarded: \$4,118.00 with interest, as provided in Section 7 of the Act, from January 1, 1927, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 459 (part). Claimant: Dodson & Groesbeck (Interest of W. H. Dodson, Jr.). Amount claimed: \$348.62. Amount awarded: \$348.62 without interest.

This award is made without prejudice to subsequent decision on review, as authorized by Section 4(d) of the Act, of that part of the claim relating to the interest of J. D. Groesbeck, or to subsequent decision, as authorized by Section 3(a) (5) of the Act of that part of the claim under General Docket No. 459 which has been classified as Special and not appraised.

General Docket No. 463. Claimant: Mrs. Holly Herring. Amount claimed: \$25,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 523. Claimant: Electrical Supply Company. Amount claimed: \$932.69. Amount awarded: \$186.54, without interest.

General Docket No. 525 (part). Claimant: Eagle Pass Lumber Company. Amount claimed: \$52,444.30. Award: disallowed.

General Docket No. 576. Claimant: Samuel T. Sutton. Amount claimed: \$20,000.00. Amount awarded: \$4,500.00, without interest.

General Docket No. 585. Claimant: International Harvester Company. Amount claimed: \$195,937.33. Award: disallowed.

General Docket No. 602. Claimant: Leonardo Pacheco. Amount claimed: \$25,000.00. Amount awarded: \$25,000.00, without interest.

General Docket No. 618. Claimant: C. A. Atwood and 27 others. Amount claimed: \$554,175.00. Amount awarded: \$55,417.50 with interest, as provided in Section 7 of the Act, from April 3, 1924.

The interests of the respective claimants in the principal sum herein awarded are as follows:

C. A. Atwood, or his estate.....	\$1,385.44
Mary L. Atwood.....	1,385.44
Perry W. Atwood.....	1,385.44
W. G. Ballantine, or his estate.....	1,385.44
Myrtle A. Babcock.....	1,154.53
F. W. Bisbee.....	1,154.53
George A. Bisbee, or his estate.....	2,309.06
Mary W. Campbell, or her estate.....	1,385.44
Georgia D. Hanna.....	1,385.44
Stanton A. Hyer, or his estate.....	6,927.18
Mary Louise Hosmer.....	461.81
Cora M. Huston.....	461.81
Marcella B. Inglis, or her estate.....	2,309.06
Edward W. Paine, or his estate.....	1,385.44
Nathan Paine.....	1,385.44
George P. Nevitt.....	1,385.44
Jessie L. Wickwire.....	1,385.44
Elizabeth P. Palmer.....	1,385.44
Sarah E. Phelps, or her estate.....	1,385.44
Martha E. Van Orden, or her estate.....	1,385.44
Alice G. Wadsworth, or her estate.....	6,927.18
Frank O. Wheeler.....	461.81
Edward M. Wheeler, or his estate.....	3,463.59
Frederick C. Wheeler.....	692.72
Arvilla Charlotte Livingston.....	692.72
Mary C. Babbitt Rockwell, or her estate.....	6,927.18
George F. Wheeler.....	1,731.80
Freeman Y. Wheeler.....	1,731.80

General Docket No. 633. Claimant: Atlantic Gulf Oil Corporation. Amount claimed: \$25,314.11. Amount awarded: \$15,734.85, without interest.

General Docket No. 635. Claimant: Atlantic Gulf Oil Corporation. Amount claimed: \$79,627.68. Amount awarded: \$49,714.72, without interest.

General Docket No. 640. Claimant: Atlantic Gulf Oil Corporation. Amount claimed: \$1,261,156.82. Award: disallowed.

General Docket No. 683. Claimant: Hiram R. Steele. Amount claimed: \$12,000.00. Amount awarded: \$6,000.00 with interest, as provided in Section 7 of the Act, from August 12, 1914.

General Docket No. 702. Claimant: Mrs. E. D. Kornegay. Amount claimed: \$25,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 721 (part). Claimant: The Heirs of M. V. Sanders. Amount claimed: \$2,497.45. Amount awarded: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 723. Claimant: A. M. Capen's Sons, Inc. Amount claimed: \$1,837.16. Award: disallowed.

General Docket No. 727. Claimant: John Rory McKinnon, John Melvin McKinnon, and Dan Angus McKinnon. Amount claimed: \$160,200.00. Amount awarded: \$4,806.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

The interests of the respective claimants in the principal sum herein awarded are as follows: John Rory McKinnon, \$3,306.00; John Melvin McKinnon, \$750.00; Dan Angus McKinnon, \$750.00.

General Docket No. 728. Claimant: Frederick Cutlar Poisson. Amount claimed: \$25,250.00. Amount awarded: \$1,000.00, without interest.

General Docket No. 729. Claimant: George W. Cook. Amount claimed: \$1,250.00. Award: disallowed.

General Docket No. 756. Claimant: George W. Cook. Amount claimed: \$4,711.28. Award: disallowed.

General Docket No. 758. Claimant: Hamilton Brown Shoe Company. Amount claimed: \$1,496.38. Amount awarded: \$299.28, without interest.

General Docket No. 760. Claimant: George W. Cook. Amount claimed: \$800.00. Amount awarded: \$16.00 with interest, as provided in Section 7 of the Act, from June 16, 1916.

General Docket No. 766 (part). Claimant: George W. Cook. Amount claimed: \$5,260.51. Amount awarded: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 768. Claimant: The Next of Kin of E. M. Harmon. Amount claimed: \$10,000.00. Amount awarded: \$3,750.00 without interest.

General Docket No. 769. Claimant: George W. Cook. Amount claimed: \$1,750,000.00. Award: disallowed.

General Docket No. 771. Claimant: Mont Woodward or Estate. Amount claimed: \$4,500.00. Award: disallowed.

General Docket No. 772. Claimant: Simon Peter Miller or Estate. Amount claimed: \$75. Award: disallowed.

General Docket No. 778. Claimant: Mrs. N. A. E. Carson. Amount claimed: \$520.00. Award: disallowed.

General Docket No. 781. Claimant: John Brooks or Estate. Amount claimed: \$200.00. Award: disallowed.

General Docket No. 786. Claimant: Frederick Meckel or Estate. Amount claimed: \$400.00. Award: disallowed.

General Docket No. 787. Claimant: Robert Moos or Estate. Amount claimed: \$150.00. Award: disallowed.

General Docket No. 790. Claimant: Thomas N. McDaniel or Estate. Amount claimed: \$345.00. Award: disallowed.

General Docket No. 922. Claimant: Celestine Puigenot (Pingenot). Amount claimed: \$1,320.00. Award: disallowed.

General Docket No. 925. Claimant: Benjamin A. Sheidley. Amount claimed: \$24,000.00. Award: disallowed.

General Docket No. 932. Claimant: Andrew O. Horne. Amount claimed: \$20,100.00. Award: disallowed.

General Docket No. 934. Claimant: Walter Clark. Amount claimed: \$340.00. Award: disallowed.

General Docket No. 949. Claimant: Mexican Iron and Steel Company. Amount claimed: \$87,250.00. Amount awarded: \$6,980.00 with interest, as provided in Section 7 of the Act, from October 29, 1925.

General Docket No. 963. Claimant: John R. Kelso. Amount claimed: \$960.00. Award: disallowed.

General Docket No. 974. Claimant: William Walker. Amount claimed: \$150.00. Award: disallowed.

General Docket No. 993. Claimant: Sinaloa Land and Water Company. Amount claimed: \$2,974,204.69. Amount awarded: \$26,698.87 with interest, as provided in Section 7 of the Act, from January 1, 1916.

General Docket No. 1003. Claimant: H. Norwald or his Estate (Augusta Norwald, Executrix and sole legatee of Henry Norwald). Amount claimed: \$250.00. Amount awarded: \$250.00 with interest, as provided in Section 7 of the Act, from November 7, 1879.

General Docket No. 1004 (part). Claimant: Mrs. E. D. Sidbury. Amount claimed: \$2,600.00. Award: disallowed.

Docket No. 1004 (part). Claimant: George Saunders. Amount claimed: \$1,300.00. Award: disallowed.

General Docket No. 1004 (part). Claimant: S. G. Borden. Amount claimed: \$2,200.00. Award: disallowed.

General Docket No. 1004 (part). Claimant: Sam H. Page and G. K. Page. Amount claimed: \$700.00. Award: disallowed.

General Docket No. 1043. Claimant: J. E. Carr et al. Amount claimed: \$104,698.76. Amount awarded: \$37,500.00 with interest as provided in Section 7 of the Act, from August 30, 1927, without prejudice to any claims they or their successors may have for events occurring after August 30, 1927.

General Docket No. 1057. Claimant: John P. Maxwell and Alexander Percival Koch. Amount claimed: \$43,486.00. Amount awarded: \$12,811.60 with interest, as provided in Section 7 of the Act, from September 2, 1914.

General Docket No. 1154. Claimant: William M. James. Amount claimed: \$203,268.20. Amount awarded: \$40,853.64, without interest.

General Docket No. 1155. Claimant: H. T. Cottam & Co., Inc. Amount claimed: \$110,392.31. Amount awarded: \$22,078.48, without interest.

General Docket No. 1217. Claimant: A. F. Kensinger. Amount claimed: \$7,292.50. Amount awarded: \$7,292.50 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 1220, 1953, 3343, 3344. Claimant: The Corralitos Company et al. Amount claimed: \$3,512,458.00. Amount awarded: \$469,165.59 with interest from dates of expropriations, as provided in Section 7 of the Act.

General Docket No. 1235. Claimant: George W. Cook. Amount claimed: \$18,192.56. Award: disallowed.

General Docket No. 1244. Claimant: Miller Rubber Products Company. Amount claimed: \$494.44. Amount awarded: \$98.89, without interest.

General Docket No. 1247. Claimant: Penn Mex Fuel Company. Amount claimed: \$1,468,045.85. Award: disallowed.

General Docket No. 1324. Claimant: Binghamton Tropical Plantation Company. Amount claimed: \$48,256.00. Amount awarded: \$21,948.55 with interest, as provided in Section 7 of the Act, from September 23, 1914.

General Docket No. 1340 (part). Claimant: Minas Pedrazzini Gold and Silver Mining Company. Amount claimed: \$16,906.68. Amount awarded: \$10,108.89 without interest, without prejudice to subsequent decision, as authorized by Section 3(a)(5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 1374. Claimant: Charles Fischer. Amount claimed: \$3,500.00. Award: disallowed.

General Docket No. 1376. Claimant: Frank Byler. Amount claimed: \$41,400.00. Award: disallowed.

General Docket No. 1381. Claimant: Salome McAllen and John Young. Amount claimed: \$215,000.00. Award: disallowed.

General Docket No. 1387. Claimant: William Washington Staples. Amount claimed: \$109,250.00. Amount awarded: \$180.00.

General Docket No. 1388. Claimant: William Pugh or Estate. Amount claimed: \$38,200.00. Award: disallowed.

General Docket No. 1393. Claimant: Justo Lopez. Amount claimed: \$11,470.00. Award: disallowed.

General Docket No. 1394. Claimant: Juan Perez. Amount claimed: \$2,000.00. Award: disallowed.

General Docket No. 1395. Claimant: Juan Salinas. Amount claimed: \$7,500.00. Award: disallowed.

General Docket No. 1396. Claimant: Francisco Yturria. Amount claimed: \$7,500.00. Award: disallowed.

General Docket No. 1399. Claimant: W. D. Thomas. Amount claimed: \$55,242.00. Award: disallowed.

General Docket No. 1400. Claimant: George Krause. Amount claimed: \$8,530.00. Award: disallowed.

General Docket No. 1401. Claimant: Josiah Turner. Amount claimed: \$1,980.00. Award: disallowed.

General Docket No. 1402. Claimant: Perry Doddridge. Amount claimed: \$158,280.00. Award: disallowed.

General Docket No. 1403. Claimant: William B. Hatch, Lemuel Sherwood Hatch, James Cristopher Hatch. Amount claimed: \$68,020.00. Award: disallowed.

General Docket No. 1405. Claimant: Reuben Curtis. Amount claimed: \$40,760.00. Award: disallowed.

General Docket No. 1407 and 1573. Claimant: Thomas O'Connor. Amount claimed: \$210,000.00. Amount awarded: \$15,000.00.

General Docket No. 1408. Claimant: Robert Driscoll, Jeremiah Driscoll, Daniel O. Driscoll, Ellen Doughty. Amount claimed: \$308,870.00. Award: disallowed.

General Docket No. 1410. Claimant: James Moseley Terry (or James Terry Moseley). Amount claimed: \$188,020.00. Award: disallowed.

General Docket No. 1411. Claimant: Youngs Coleman. Amount claimed: \$84,000.00. Amount awarded: \$4,000.00, without interest.

General Docket No. 1416. Claimant: Henry W. Berry. Amount claimed: \$42,160.00. Award: disallowed.

General Docket No. 1418. Claimant: Mathew Givens. Amount claimed: \$50,360.00. Award: disallowed.

General Docket No. 1423. Claimant: Alice J. Clark. Amount claimed: \$114,300.00. Award: disallowed.

General Docket No. 1428. Claimant: William Hobbs and Harriet Wright. Amount claimed: \$34,610.00. Award: disallowed.

General Docket No. 1430. Claimant: Henry Scott. Amount claimed: \$163,690.00. Amount awarded: \$6,000.00, without interest.

General Docket No. 1435. Claimant: George Allen et al. Amount claimed: \$791,410.00. Amount awarded: \$1,300.00, without interest.

General Docket No. 1437. Claimant: James Lowe. Amount claimed: \$555,400.00. Award: disallowed.

General Docket No. 1442. Claimant: Francis M. Mansfield. Amount claimed: \$52,570.00. Award: disallowed.

General Docket No. 1443. Claimant: William A. Pettus. Amount claimed: \$189,600.00. Award: disallowed.

General Docket No. 1444. Claimant: William Rush. Amount claimed: \$208,400.00. Award: disallowed.

General Docket No. 1445. Claimant: John Crayton. Amount claimed: \$88,400.00. Award: disallowed.

General Docket No. 1449. Claimant: Phoebe Scott. Amount claimed: \$40,000.00. Award: disallowed.

General Docket No. 1450. Claimant: Elijah Ray. Amount claimed: \$98,400.00. Award: disallowed.

General Docket No. 1452. Claimant: John W. Stockley. Amount claimed: \$399,592.00. Amount awarded: \$71,000.00, without interest.

General Docket No. 1454 and 1820. Claimant: Joseph Tumlinson. Amount claimed: \$35,090.00. Award: disallowed.

General Docket No. 1458. Claimant: Mrs. A. Harris. Amount claimed: \$24,000.00. Award: disallowed.

General Docket No. 1459. Claimant: Rufus J. Carroll. Amount claimed: \$41,600.00. Amount awarded: \$2,500.00.

General Docket No. 1463. Claimant: George W. Pettigrew. Amount claimed: \$13,350.00. Award: disallowed.

General Docket No. 1468. Claimant: Dennis McCoy. Amount claimed: \$39,280.00. Award: disallowed.

General Docket No. 1470. Claimant: Thomas Sheeran. Amount claimed: \$52,000.00. Award: disallowed.

General Docket No. 1471. Claimant: John Whitehead. Amount claimed: \$32,200.00. Award: disallowed.

General Docket No. 1472. Claimant: Ann E. Lewis. Amount claimed: \$62,560.00. Amount awarded: \$8,500.00.

General Docket No. 1478. Claimant: Edward N. Gray. Amount claimed: \$88,000.00. Amount awarded: \$840.00, without interest.

General Docket No. 1480. Claimant: George W. Whaley. Amount claimed: \$6,850.00. Amount awarded: \$1,500.00.

General Docket No. 1491. Claimant: Mrs. Robert Farley. Amount claimed: \$3,200.00. Award: disallowed.

General Docket No. 1493. Claimant: Hughlett W. Griner. Amount claimed: \$35,600.00. Award: disallowed.

General Docket No. 1507. Claimant: Catherine J. Dunn. Amount claimed: \$24,800.00. Award: disallowed.

General Docket No. 1510. Claimant: Willis B. Moore. Amount claimed: \$20,000.00. Award: disallowed.

General Docket No. 1511. Claimant: John O. Rigby. Amount claimed: \$11,390.00. Amount awarded: \$1,500.00.

General Docket No. 1514. Claimant: John Hynes. Amount claimed: \$73,320.00. Amount awarded: \$40,000.00.

General Docket No. 1515. Claimant: Richard Gallagher. Amount claimed: \$48,000.00. Award: disallowed.

General Docket No. 1516. Claimant: James B. Wells. Amount claimed: \$134,400.00. Amount awarded: \$27,500.00, without interest.

General Docket No. 1519. Claimant: Emiline Knibler and Ila Thomas. Amount claimed: \$1,230.00. Award: disallowed.

General Docket No. 1523. Claimant: Peter H. Fagan. Amount claimed: \$159,300.00. Award: disallowed.

General Docket No. 1526. Claimant: William G. Butler. Amount claimed: \$41,600.00. Award: disallowed.

General Docket No. 1530. Claimant: Toutant Beauregard. Amount claimed: \$98,680.00. Award: disallowed.

General Docket No. 1537. Claimant: G. Drake Gilliland. Amount claimed: \$24,270.00. Award: disallowed.

General Docket No. 1539. Claimant: William Redus. Amount claimed: \$21,660.00. Award: disallowed.

General Docket No. 1541. Claimant: J. J. Simpson. Amount claimed: \$287.00. Award: disallowed.

General Docket No. 1543. Claimant: B. A. Borroum. Amount claimed: \$20,340.00. Award: disallowed.

General Docket No. 1546. Claimant: Frederick Perner. Amount claimed: \$10,350.00. Award: disallowed.

General Docket No. 1547. Claimant: Henry Cartwright. Amount claimed: \$6,350.00. Award: disallowed.

General Docket No. 1548. Claimant: John H. Portwood. Amount claimed: \$15,120.00. Award: disallowed.

General Docket No. 1549. Claimant: John A. Booth. Amount claimed: \$37,350.00. Award: disallowed.

General Docket No. 1550. Claimant: William J. Rutledge. Amount claimed: \$62,010.00. Award: disallowed.

General Docket No. 1553. Claimant: Patrick H. Rose. Amount claimed: \$41,160.00. Award: disallowed.

General Docket No. 1556. Claimant: Isaac C. Bearfield (Barfield). Amount claimed: \$16,780.00. Award: disallowed.

General Docket No. 1561. Claimant: Susan L. Hodges. Amount claimed: \$47,000.00. Award: disallowed.

General Docket No. 1563 and 1625. Claimant: Laura Fuller. Amount claimed: \$61,800.00. Award: disallowed.

General Docket No. 1564. Claimant: William C. McCAda. Amount claimed: \$18,440.00. Award: disallowed.

General Docket No. 1568. Claimant: William Caruthers. Amount claimed: \$1,450.00. Award: disallowed.

General Docket No. 1574. Claimant: Catherine Siddick. Amount claimed: \$33,060.00. Award: disallowed.

General Docket No. 1575. Claimant: John Vale. Amount claimed: \$35,550.00. Award: disallowed.

General Docket No. 1577. Claimant: Allen C. Jones. Amount claimed: \$61,260.00. Award: disallowed.

General Docket No. 1579. Claimant: John O'Brien. Amount claimed: \$125,380.00. Award: disallowed.

General Docket No. 1582. Claimant: Percy W. Whitby. Amount claimed: \$95,050.00. Award: disallowed.

General Docket No. 1590. Claimant: Jerome Strickland. Amount claimed: \$184,690.00. Award: disallowed.

General Docket No. 1591. Claimant: Ann McMahon. Amount claimed: \$9,750.00. Award: disallowed.

General Docket No. 1594. Claimant: John R. Hargus. Amount claimed: \$487,010.00. Award: disallowed.

General Docket No. 1597. Claimant: Samuel Lytle. Amount claimed: \$101,100.0. Award: disallowed.

General Docket No. 1598. Claimant: Hardin B. Adams and Edwin D. Wickes. Amount claimed: \$18,415.00. Award: disallowed.

General Docket No. 1607. Claimant: Benjamin Cage. Amount claimed: \$330.00. Award: disallowed.

General Docket No. 1611. Claimant: Jane Cline. Amount claimed: \$35,000.00. Award: disallowed.

General Docket No. 1614. Claimant: Irvin Cox. Amount claimed: \$3,100.00. Award: disallowed.

General Docket No. 1621. Claimant: James M. Finley. Amount claimed: \$23,800.00. Award: disallowed.

General Docket No. 1622. Claimant: James Franks. Amount claimed: \$4,000.00. Award: disallowed.

General Docket No. 1623. Claimant: William Franks. Amount claimed: \$14,960.00. Award: disallowed.

General Docket No. 1624. Claimant: John S. Fuller. Amount claimed: \$22,000.00. Award: disallowed.

General Docket No. 1626. Claimant: Peter Gallagher. Amount claimed: \$75,260.00. Award: disallowed.

General Docket No. 1628. Claimant: Malcomb Gillis. Amount claimed: \$700.00. Award: disallowed.

General Docket No. 1629. Claimant: Rayburn Goins. Amount claimed: \$33,430.00. Award: disallowed.

General Docket No. 1630. Claimant: Margaret C. Hancock. Amount claimed: \$1,420.00. Award: disallowed.

General Docket No. 1631. Claimant: Hugh L. Harrison. Amount claimed: \$1,800.00. Award: disallowed.

General Docket No. 1634. Claimant: Theodore Heermann. Amount claimed: \$32,350.00. Award: disallowed.

General Docket No. 1636. Claimant: James Jolly. Amount claimed: \$4,300.00. Award: disallowed.

General Docket No. 1640. Claimant: Patrick Kinney. Amount claimed: \$1,150.00. Award: disallowed.

General Docket No. 1643. Claimant: J. D. Long. Amount claimed: \$16,000.00. Award: disallowed.

General Docket No. 1644. Claimant: E. R. Lyons. Amount claimed: \$30,000.00. Award: disallowed.

General Docket No. 1645. Claimant: Eliza C. McKinney. Amount claimed: \$1,420.00. Award: disallowed.

General Docket No. 1647. Claimant: H. C. McKay. Amount claimed: \$13,540.00. Award: disallowed.

General Docket No. 1650 and 1764. Claimant: Bennett Musgrave. Amount claimed: \$533,670.00. Award: disallowed.

General Docket No. 1652. Claimant: Jesse H. and H. J. Presnall. Amount claimed: \$22,650.00. Award: disallowed.

General Docket No. 1655. Claimant: J. F. Robinson. Amount claimed: \$21,990.00. Award: disallowed.

General Docket No. 1656. Claimant: George W. Saunders. Amount claimed: \$150.00. Award: disallowed.

General Docket No. 1657. Claimant: Benjamin Shropshire. Amount claimed: \$6,290.00. Award: disallowed.

General Docket No. 1659. Claimant: John M. Smith. Amount claimed: \$4,060.00. Award: disallowed.

General Docket No. 1660. Claimant: J. B. Spears. Amount claimed: \$25,000.00. Award: disallowed.

General Docket No. 1663. Claimant: R. E. Neill. Amount claimed: \$145,000.00. Award: disallowed.

General Docket No. 1669. Claimant: S. E. and D. J. Trainer. Amount claimed: \$3,050.00. Award: disallowed.

General Docket No. 1670. Claimant: Benjamin F. Traweek (Trawuk). Amount claimed: \$350.00. Award: disallowed.

General Docket No. 1676. Claimant: Annie Wright. Amount claimed: \$19,000.00. Award: disallowed.

General Docket No. 1677. Claimant: M. C. Yates. Amount claimed: \$21,000.00. Award: disallowed.

General Docket No. 1678. Claimant: John Green. Amount claimed: \$2,680.00. Award: disallowed.

General Docket No. 1681. Claimant: Moses Simpson. Amount claimed: \$15,600.00. Award: disallowed.

General Docket No. 1687. Claimant: John Welder. Amount claimed: \$114,714.00. Award: disallowed.

General Docket No. 1689. Claimant: N. R. McDaniel. Amount claimed: \$43,350.00. Award: disallowed.

General Docket No. 1690. Claimant: William Armstrong. Amount claimed: \$43,350.00. Award: disallowed.

General Docket No. 1691. Claimant: Stephen A. Duke. Amount claimed: \$8,320.00. Award: disallowed.

General Docket No. 1692. Claimant: George McCarty. Amount claimed: \$5,400.00. Award: disallowed.

General Docket No. 1693. Claimant: Susan Dugat. Amount claimed: \$34,820.00. Award: disallowed.

General Docket No. 1726. Claimant: L. B. Harris. Amount claimed: \$778,680.00. Award: disallowed.

General Docket No. 1730. Claimant: William G. Winsett. Amount claimed: \$30,200.00. Award: disallowed.

General Docket No. 1735. Claimant: Stephen A. Duke and John M. Duke. Amount claimed: \$133,600.00. Amount awarded: \$8,300.00, without interest.

General Docket No. 1736. Claimant: Washington Oden. Amount claimed: \$119,750.00. Award: disallowed.

General Docket No. 1742. Claimant: James C. Carr. Amount claimed: \$8,000.00. Award: disallowed.

General Docket No. 1743. Claimant: James C. Tyson. Amount claimed: \$36,910.00. Award: disallowed.

General Docket No. 1745. Claimant: Elizabeth C. Fudge. Amount claimed: \$17,120.00. Award: disallowed.

General Docket No. 1747. Claimant: William J. McLane. Amount claimed: \$68,660.00. Award: disallowed.

General Docket No. 1748. Claimant: John W. Campbell. Amount claimed: \$53,280.00. Award: disallowed.

General Docket No. 1751. Claimant: Duncan Lemmon. Amount claimed: \$77,260.00. Award: disallowed.

General Docket Nos. 1756, 1757. Claimant: George T. Howard. Amount claimed: \$26,650.00. Award: disallowed.

General Docket No. 1758. Claimant: John E. DeLong. Amount claimed: \$9,420.00. Award: disallowed.

General Docket No. 1762. Claimant: Sarah Weaver. Amount claimed: \$109,520.00. Award: disallowed.

General Docket No. 1763. Claimant: William Morris. Amount claimed: \$92,690.00. Award: disallowed.

General Docket No. 1765. Claimant: William H. Baley. Amount claimed: \$6,200.00. Award: disallowed.

General Docket No. 1769. Claimant: James H. (N) Blackaller. Amount claimed: \$6,150.00. Award: disallowed.

General Docket No. 1771. Claimant: A. W. Jonas. Amount claimed: \$330.00. Award: disallowed.

General Docket No. 1773. Claimant: William Jonas. Amount claimed: \$1,800.00. Award: disallowed.

General Docket No. 1774. Claimant: Rolly M. Harper. Amount claimed: \$810.00. Award: disallowed.

General Docket No. 1775. Claimant: D. W. Fly. Amount claimed: \$840.00. Award: disallowed.

General Docket No. 1778. Claimant: William A. Waugh. Amount claimed: \$71,120.00. Award: disallowed.

General Docket No. 1780. Claimant: Michael Whelan. Amount claimed: \$42,650.00. Award: disallowed.

General Docket No. 1781. Claimant: Isaac Cox. Amount claimed: \$18,820.00. Award: disallowed.

General Docket No. 1785. Claimant: Charles F. Leisering. Amount claimed: \$7,880.00. Award: disallowed.

General Docket No. 1786. Claimant: James M. Ragland. Amount claimed: \$33,600.00. Award: disallowed.

General Docket No. 1788. Claimant: Robert Martin. Amount claimed: \$10,040.00. Award: disallowed.

General Docket No. 1789. Claimant: James R. McCarty. Amount claimed: \$32,190.00. Award: disallowed.

General Docket No. 1790. Claimant: R. P. Clarkson. Amount claimed: \$5,600.00. Award: disallowed.

General Docket No. 1792. Claimant: Henry V. Barrow. Amount claimed: \$74,180.00. Award: disallowed.

General Docket No. 1799. Claimant: D. G. F. Carpenter. Amount claimed: \$11,890.00. Award: disallowed.

General Docket No. 1804. Claimant: Wm. G. McKinzie. Amount claimed: \$500.00. Award: disallowed.

General Docket No. 1806. Claimant: Hardin W. Adams and Edwin De Lacy Wickes, Jointly, or their Estates. Amount claimed: \$3,120.00. Amount awarded: \$289.50 with interest, as provided in Section 7 of the Act, from January 16, 1872.

For the reasons set forth in the Memorandum Decision of the Commissioner designated by the United States pursuant to the General Claims Protocol between the United States and Mexico signed April 24, 1934 (48 Stat. 1844), the claim of the alleged successors in interest of Edwin De Lacy Wickes is disallowed.

General Docket No. 1809. Claimant: Lewis A. Dickson. Amount claimed: \$131,900.00. Amount awarded: \$110,690.00, without interest.

General Docket No. 1812. Claimant: H. da Ponte, or his Estate. Amount claimed: \$5,000.00. Amount awarded: \$1,000.00, without interest.

The interests of the respective claimants in the principal sum herein awarded are as follows: Lorenzo da Ponte, \$250.00; Mrs. Ethel da Ponte Steck, \$250.00; Mrs. Agnes da Ponte Berne, \$250.00; Harry G. da Ponte, \$250.00.

General Docket No. 1819. Claimant: Augustine M. Gildea. Amount claimed: \$10,541.00. Award: disallowed.

General Docket No. 1904. Claimant: Pierce Oil Corporation. Amount claimed: \$213,300.00. Amount awarded: \$213,300.00 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 1918 (part). Claimant: Herbert R. Cornforth. Amount claimed: \$6,652.88. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 1955. Claimant: The Home Insurance Company (a New York Corporation) and Fireman's Fund Insurance Company (a California Corporation). Amount claimed: \$10,350.00. Award: disallowed.

General Docket No. 1991 (part). Claimant: Lluvia de Oro Gold Mining Company. Amount claimed: \$36,489.31. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3 (a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2013. Claimant: Chicle Development Co., Inc. Amount claimed: \$166,666.00. Amount awarded: \$60,563.82 with interest, as provided in Section 7 of the Act, from May 15, 1924.

General Docket No. 2020 (part). Claimant: Apolonio G. Lopez. Amount claimed: \$9,535.03. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by

Section 3 (a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2053. Claimant: Elizabeth A. Streater. Amount claimed: \$15,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 2055. Claimant: Charles Frederick Fenchler and David Silvestro Fenchler. Amount claimed: \$225,619.70. Amount awarded: \$24,397.00 with interest, as provided in Section 7 of the Act, from April 23, 1925.

The interests of the respective claimants in the principal sum herein awarded are as follows: Charles Frederick Fenchler, or his estate, \$12,198.50; David Silvestro Fenchler, or his estate, \$12,198.50.

General Docket No. 2154. Claimant: Guerrero Trading Company. Amount claimed: \$320,000.00. Amount awarded: \$105,300.00 with interest, as provided in Section 7 of the Act, from March 4, 1926.

General Docket No. 2183 (part relating to Draft). Claimant: Singer Sewing Machine Company. Amount claimed: \$120.00. Amount awarded: \$74.40 with interest, as provided in Section 7 of the Act, from July 8, 1914.

General Docket No. 2183 (part relating to Reguladora bills). Claimant: Singer Sewing Machine Company. Amount claimed: \$7,110.70. Amount awarded: \$1,392.86, without interest.

General Docket No. 2193. Claimant: George J. Douglas. Amount claimed: \$4,134.69. Amount awarded: \$1,400.00 with interest, as provided in Section 7 of the Act, from December 31, 1877.

General Docket No. 2230. Claimant: A. Iselin & Company. Amount claimed: \$35,903.38. Amount awarded: \$7,180.68, without interest.

General Docket No. 2276. Claimant: Estate of C. F. S. Sternau. Amount claimed: \$5,806.58. Award: disallowed.

General Docket No. 2282 (part). Claimant: Merritt Masters Sherman et al. Amount claimed: \$149,188.77. Amount awarded: \$17,297.18 with interest, as provided in Section 7 of the Act, from January 1, 1921, without prejudice to subsequent decision, as authorized by Section 3(a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

The interests of the respective claimants in the principal sum herein awarded are as follows: Merritt Masters Sherman, or his estate, \$5,189.15; Tamar Gilbert Rockwell, or her estate, \$4,036.01; Lewis Henry Lapham, or his estate, \$6,054.01; Mary Elizabeth Lapham, or her estate, \$622.67; Henry George Lapham, \$1,345.34.

General Docket No. 2285 (part). Claimant: The Crown Cork and Seal Company. Amount claimed: \$108,980.08. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3(a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2292. Claimant: E. R. Warner. Amount claimed: \$979.24. Amount awarded: \$483.83 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 2307 (part). Claimant: Krakauer-Zork Company, E. Moye, Receiver. Amount claimed: \$2,947.77. Amount awarded: \$2,947.77 with interest from dates of expropriations, as provided in Section 7 of the Act without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 2317 (part). Claimant: Charles Biesel. Amount claimed: \$. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by section 3 (a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2323 (part). Claimant: Dolores R. V. Newton. Amount claimed: \$. Award: That part of the claim which has been classified as General and appraised is disallowed.

This award is without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2350 (part). Claimant: Santo Domingo Silver Mining

Company. Amount claimed: \$787,321.40. Amount awarded: \$286,718.00 without interest, without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

General Docket No. 2363. Claimant: Charles Wilson. Amount claimed: \$1,600.00. Amount awarded: \$1,400.00, without interest.

General Docket No. 2395. Claimant: D. M. Rupe. Amount claimed: \$47,700.00. Award: disallowed.

General Docket No. 2420. Claimant: R. T. Dickey. Amount claimed: \$4,960.00. Award: disallowed.

General Docket No. 2434. Claimant: Sarah Harte. Amount claimed: \$26,200.00. Award: disallowed.

General Docket No. 2435. Claimant: Lyman Brightman. Amount claimed: \$17,250.00. Award: disallowed.

General Docket No. 2436. Claimant: James Hart. Amount claimed: \$33,050.00. Award: disallowed.

General Docket No. 2445 (part). Claimant: Gordon M. Buck and Mrs. Marian Buck Purcell. Amount claimed: \$5,000.00. Amount awarded: \$3,333.33 with interest, as provided in Section 7 of the Act, from August 12, 1914.

General Docket No. 2446. Claimant: E. C. Russell. Amount claimed: \$14,600.00. Award: disallowed.

General Docket No. 2447. Claimant: Cornelius Stubbs. Amount claimed: \$130,390.00. Award: disallowed.

General Docket No. 2450. Claimant: J. E. Smith. Amount claimed: \$37,600.00. Amount awarded: \$11,280.00 with interest, as provided in Section 7 of the Act, from August 29, 1914.

General Docket No. 2452. Claimant: Samuel H. Buck and Flora Lee. Amount claimed: \$41,792.30. Award: disallowed.

General Docket No. 2459. Claimant: Mexican Sinclair Petroleum Corporation. Amount claimed: \$620,364.62. Award disallowed.

General Docket No. 2468. Claimant: John G. Maton. Amount claimed: \$16,355.00. Award: disallowed.

General Docket No. 2470. Claimant: Mary A. Stephens (Evangeline Stephens Duff substituted as party claimant). Amount claimed: \$25,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 2488. Claimant: Ellen Corrigan. Amount claimed: \$102,050.00. Award: disallowed.

General Docket No. 2490 (part). Claimant: The Batopilas Mining Company. Amount claimed: \$46,589.02. Amount awarded: \$1,205.54 with interest, as provided in Section 7 of the Act, from January 1, 1915, without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as Special and not appraised.

General Docket No. 2493. Claimant: The Next of Kin of Martin L. Dawson. Amount claimed: \$50,000.00. Amount awarded: \$2,500.00, without interest.

General Docket No. 2501. Claimant: John H. Choate. Amount claimed: \$52,150.00. Award: disallowed.

General Docket No. 2503. Claimant: Estate of A. E. Noble, deceased, Mrs. A. E. Noble, et al. Amount claimed: \$2,000,000.00. Amount awarded: \$70,085.00, without interest.

General Docket No. 2506. Claimant: San Francisco de la Boruca Mining Company. Amount claimed: \$10,000.00. Amount awarded: \$100.00, without interest.

General Docket No. 2533. Claimant: Francis M. Box. Amount claimed: \$52,760.00. Award: disallowed.

General Docket No. 2543. Claimant: C. E. Dugat, Guardian of Alexander Dugat. Amount claimed: \$8,090.00. Award: disallowed.

General Docket No. 2550. Claimant: Hiram Catron, Next of Kin of Peter Catron. Amount claimed: \$50,000.00. Amount awarded: \$7,500.00, without interest.

General Docket No. 2564. Claimant: Cubo Mining & Milling Company. Amount claimed: \$459,743.97. Amount awarded: \$143,557.88, without interest.

- General Docket No. 2565. Claimant: Benjamin Thomas. Amount claimed: \$3,360.00. Award: disallowed.
- General Docket No. 2568. Claimant: Tobias A. Long. Amount claimed: \$22,100.00. Award: disallowed.
- General Docket No. 2571. Claimant: Headley Polk. Amount claimed: \$13,310.00. Award: disallowed.
- General Docket No. 2573. Claimant: Caswell Bell. Amount claimed: \$6,630.00. Award: disallowed.
- General Docket No. 2574. Claimant: George W. Chapman. Amount claimed: \$83,340.00. Award: disallowed.
- General Docket No. 2577. Claimant: John A. Warburton. Amount claimed: \$148,280.00. Award: disallowed.
- General Docket No. 2578. Claimant: Joseph W. McCampbell. Amount claimed: \$30,000.00. Award: disallowed.
- General Docket No. 2583. Claimant: Adam Bless. Amount claimed: \$920.00. Award: disallowed.
- General Docket No. 2584. Claimant: John H. Slaughter. Amount claimed: \$368,820.00. Award: disallowed.
- General Docket No. 2585. Claimant: Stephen M. Walker. Amount claimed: \$146,810.00. Award: disallowed.
- General Docket No. 2587. Claimant: William W. Talbot. Amount claimed: \$44,850.00. Award: disallowed.
- General Docket No. 2590. Claimant: William S. K. Mussett. Amount claimed: \$28,670.00. Award: disallowed.
- General Docket No. 2592. Claimant: William Andrews. Amount claimed: \$45,700.00. Award: disallowed.
- General Docket No. 2593. Claimant: L. C. Wright. Amount claimed: \$128,620.00. Award: disallowed.
- General Docket No. 2595. Claimant: Joseph Troups. Amount claimed: \$40,000.00. Award: disallowed.
- General Docket No. 2631. Claimant: Next of kin of George W. (A.) Smith. Amount claimed: \$10,000.00. Award: disallowed.
- General Docket No. 2660. Claimant: Ann Teal. Amount claimed: \$38,370.00. Award: disallowed.
- General Docket No. 2661. Claimant: Buena Vista Coffee Company and La Concordia Petroleum Company. Amount claimed: \$640,000.00. Amount awarded: \$4,784.64 with interest, as provided in Section 7 of the Act, from November 26, 1924.
- The interests of the respective claimants in the principal sum herein awarded are as follows: Henry K. Henderson, \$4,485.60; Mrs. Elizabeth C. Sullivan, \$299.04.
- General Docket No. 2669. Claimant: Los Ailes Mining Company. Amount claimed: \$652.17. Amount awarded: \$117.39 with interest, as provided in Section 7 of the Act, from September 15, 1916.
- General Docket No. 2694. Claimant: John W. Haley. Amount claimed: \$19,269.19. Amount awarded: \$3,400.00 with interest, as provided in Section 7 of the Act, from September 15, 1916.
- General Docket No. 2697. Claimant: Guaymas Water Supply Company, Ltd. Amount claimed: \$1,605.00. Amount awarded: \$1,605.00 with interest, as provided in Section 7 of the Act, from July 14, 1914.
- General Docket No. 2702. Claimant: Concepcion P. Kennedy. Amount claimed: \$271,004.55. Amount awarded: \$105,110.00 with interest, as provided in Section 7 of the Act, from September 30, 1921, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.
- General Docket No. 2722. Claimant: M. Elsasser and the Heirs of A. Weill. Amount claimed: \$150,000.00. Amount awarded: \$25,141.65 with interest, as provided in Section 7 of the Act, from October 27, 1924.
- The interests of the respective claimants in the principal sum herein awarded are as follows: M. Elsasser, or his estate, \$15,085.00; Melville K. Weill, \$5,028.33; Elizabeth W. Newman, \$5,028.32.
- General Docket No. 2744. Claimant: Orville M. Powers. Amount claimed: \$195,801.00. Award: disallowed.
- General Docket No. 2756. Claimant: Mrs. E. A. Merton. Amount claimed:

\$231.57. Amount awarded: \$231.47 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 2765. Claimant: Joseph Muhlendorff, as Administrator of the Estate of Samuel Houston Hall, Deceased. Amount claimed: \$2,442.65. Amount awarded: \$2,314.92 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3071. Claimant: Alexander S. Sharpton. Amount claimed: \$40,000.00. Amount awarded: \$10,778.00 with interest, as provided in Section 7 of the Act.

General Docket No. 3072. Claimant: A. R. Blankenship. Amount claimed: \$10,000.00. Award: disallowed.

General Docket No. 3075. Claimant: W. M. Gramer. Amount claimed: \$15,000.00. Amount awarded: \$900.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 3076. Claimant: Calvin P. Russell, Joseph A. Brown and The Heirs of Frank R. Crocker. Amount claimed: \$95,725.00. Amount awarded: \$3,282.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

The interests of the respective claimants in the principal sum herein awarded are as follows: Calvin P. Russell, \$1,641.00; Estate of Joseph A. Brown, \$820.50; The Heirs of Frank R. Crocker, \$820.50.

General Docket No. 3078. Claimant: Henrietta Volstorff. Amount claimed: \$25,000.00. Amount awarded: \$3,822.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 3081. Claimant: Eric Jacobsen. Amount claimed: \$1,362.65. Amount awarded: \$1,212.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 3085. Claimant: Waldo Williams. Amount claimed: \$2,500.00. Amount awarded: \$1,500.00 with interest, as provided in Section 7 of the Act, from December 4, 1924.

General Docket No. 3106. Claimant: E. B. Harrison. Amount claimed: \$13,000.00. Award: disallowed.

General Docket No. 3109. Claimant: John Childress. Amount claimed: \$30,000.00. Amount awarded: \$60.00, without interest.

General Docket No. 3110. Claimant: Edward W. Tynan. Amount claimed: \$19,575.00. Award: disallowed.

General Docket No. 3124. Claimant: V. E. Ware, Victor Carusso. Amount claimed: \$45,889.45. Award: disallowed.

General Docket No. 3137. Claimant: D. B. Bollinger, et al. Amount claimed: \$15,294.66. Amount awarded: \$6,688.78 with interest, as provided in Section 7 of the Act, on \$3,188.78 thereof from October 18, 1918.

The interests of the respective claimants in the principal sum herein awarded are as follows: D. B. Bollinger, \$5,016.58; Ivey P. Bollinger, \$1,672.20.

General Docket No. 3146 and 3367. Claimant: Motzorongo Company. Amount claimed: \$140,000.00. Amount awarded: \$28,560.00 with interest, as provided in Section 7 of the Act, from March 6, 1926.

General Docket No. 3176. Claimant: Paul C. Zuhlke. Amount claimed: \$2,505.00. Amount awarded: \$501.00, without interest.

General Docket No. 3181. Claimant: Julia E. Roso. Amount claimed: \$56,100.00. Amount awarded: \$6,300.00 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3200. Claimant: Rosa Vivian Snyder. Amount claimed: \$4,500.00. Award: disallowed.

General Docket No. 3201. Claimant: Sidney G. de Kay. Amount claimed: \$7,469.00. Award: disallowed.

General Docket No. 3204. Claimant: Sara W. Mergenthal. Amount claimed: \$5,023.29. Amount awarded: \$4,604.68 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3205. Claimant: A. S. Sharpton. Amount claimed: \$907.92. Amount awarded: \$907.92 with interest, as provided in Section 7 of the Act, from September 21, 1916.

General Docket No. 3213 (part). Claimant: Fred Leber and Guadalupe Garcia Leber, his wife. Amount claimed: \$20,000.00. Award: disallowed.

General Docket No. 3220. Claimant: Guaranty Trust Company of New York, as Trustee. Amount claimed: \$10,116,608.69. Award: disallowed.

General Docket No. 3224. Claimant: The Fletcher American National Bank of Indianapolis. Amount claimed: \$77,600.00. Award: disallowed.

General Docket No. 3247. Claimant: Home Insurance Company and Federal Insurance Company. Amount claimed: \$33,320.00. Amount awarded: \$33,320.00 with interest, as provided in Section 7 of the Act, on \$23,320.00 thereof, awarded to Home Insurance Company, from August 20, 1924; on \$10,000.00 thereof, awarded to Federal Insurance Company, from July 6, 1925.

The interests of the respective claimants in the principal sum herein awarded are as follows: Home Insurance Company, \$23,320.00; Federal Insurance Company, \$10,000.00.

General Docket No. 3261. Claimant: Edward A. Salisbury, Della Salisbury, Alfred J. Salisbury, Jr., Lois Salisbury Carruthers, Howard G. Salisbury, Willard Salisbury, Cephas B. Salisbury and Charles G. McCoy. Amount claimed: \$545,447.22. Amount awarded: \$196,208.60 with interest, as provided in Section 7 of the Act, from January 1, 1925.

General Docket No. 3262. Claimant: Atlantic Gulf Oil Corporation, et al. Amount claimed: \$52.70. Amount awarded: \$52.70 with interest, as provided in Section 7 of the Act, from December 27, 1923.

General Docket No. 3263. Claimant: Atlantic Gulf Oil Corporation, et al. Amount claimed: \$232.26. Amount awarded: \$232.26 with interest, as provided in Section 7 of the Act, from March 31, 1924.

General Docket No. 3267. Claimant: Next of Kin of T. M. Nelson George. Amount claimed: \$25,000.00. Amount awarded: \$10,000.00, without interest.

General Docket No. 3271. Claimant: Stephen D. Laing. Amount claimed: \$2,000.00. Amount awarded: \$125.00, without interest.

General Docket No. 3336. Claimant: Samuel L. Park. Amount claimed: \$24,000.00. Amount awarded: \$5,160.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3342. Claimant: Edward G. Bruckman. Amount claimed: \$1,390.00. Amount awarded: \$1,280.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3346. Claimant: Hiram W. Hechler. Amount claimed: \$30,000.00. Amount awarded: \$6,440.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3347. Claimant: Marion Ochsner, Administratrix of the Estate of Albert J. Ochsner, Deceased. Amount claimed: \$5,386.42. Amount awarded: \$596.00 with interest from dates of loss, as provided in Section 7 of the Act.

General Docket No. 3348. Claimant: Heirs and Next of Kin of D. T. Rogers. Amount claimed: \$4,000.00. Amount awarded: \$2,580.00 with interest, as provided by Section 7 of the Act, from March 1, 1926.

General Docket No. 3349. Claimant: Anastacio Azcarate. Amount claimed: \$102,600.00. Amount awarded: \$52,768.00 with interest, as provided in Section 7 of the Act, from June 29, 1922.

General Docket No. 3352. Claimant: Mrs. Vina McCain, Executrix. Amount claimed: \$3,200.00. Amount awarded: \$3,200.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3354. Claimant: Mrs. D. E. Thomas. Amount claimed: \$6,000.00. Amount awarded: \$1,344.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3355. Claimant: Robert V. Echols. Amount claimed: \$1,560.00. Award: disallowed.

General Docket No. 3361. Claimant: Jacob M. Gergen. Amount claimed: \$34,500.00. Amount awarded: \$10,368.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3363. Claimant: Andrew Clinesmith. Amount claimed: \$7,711.00. Amount awarded \$2,900.00 with interest, as provided in Section 7 of the Act, from March 30, 1925.

General Docket No. 3364. Claimant: Frederick J. Schroeder. Amount claimed: \$200,000.00. Amount awarded: \$5,043.20 with interest, as provided in Section 7 of the Act, from April 30, 1926.

General Docket No. 3365. Claimant: Ray N. Strasbaugh. Amount claimed: \$1,800.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3369. Claimant: William Mott, Jr., Son of M. C. Mott, Deceased. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3375. Claimant: Isaac Mathewson. Amount claimed: \$196,000.00. Award: disallowed.

General Docket No. 3379. Claimant: H. H. Reeder. Amount claimed: \$158,820.00. Amount awarded: To Kona Stanley Reeder the principal sum of \$24,205.28 with interest from dates of expropriations, as provided in Section 7 of the Act.

General Docket No. 3381. Claimant: Carlos Morrill et al. Amount claimed: \$4,500.00. Amount awarded: \$3,328.00 with interest, as provided in Section 7 of the Act, from December 22, 1926.

General Docket No. 3382. Claimant: American International Fuel and Petroleum Company. Amount claimed: \$437,273.05. Amount awarded: \$17,379.00 with interest, as provided in Section 7 of the Act, from September 30, 1926.

General Docket No. 3383. Claimant: The Northwestern Fire and Marine Insurance Company, Inc. Amount claimed: \$5,000.00. Amount awarded: \$5,000.00 with interest, as provided in Section 7 of the Act, from April 17, 1924.

General Docket No. 3384 and 3593. Claimant: Lewis Lamm. Amount claimed: \$85,080.80. Amount awarded: \$18,668.00 with interest, as provided in Section 7 of the Act, from April 1, 1925.

General Docket No. 3397. Claimant: Arthur Cunningham. Amount claimed: \$6,500.00. Amount awarded: \$3,925.00 with interest, as provided in Section 7 of the Act, from June 29, 1926.

General Docket No. 3401. Claimant: Willis N. Graves. Amount claimed: \$3,000.00. Amount awarded: \$2,580.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3404. Claimant: John M. Barron. Amount claimed: \$34,984.75. Amount awarded: \$15,589.57 with interest, as provided in Section 7 of the Act, from February 8, 1926.

General Docket No. 3405. Claimant: Henry E. Wilson. Amount claimed: \$3,000.00. Amount awarded: \$660.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3407. Claimant: Joseph G. Branch. Amount claimed: \$100,000.00. Award: disallowed.

General Docket No. 3409. Claimant: Mrs. Dixie Rena Reid and James R. Clayton, deceased. Amount claimed: \$54,988.83. Amount awarded: \$9,100.00 with interest, as provided in Section 7 of the Act, from April 8, 1925.

The interests of the respective claimants in the principal sum herein awarded are as follows: Mrs. Dixie Rena Reid, \$6,066.67; Joe McDonald Reid, in his own right and as Executor of Estate of James R. Clayton, \$3,033.33.

General Docket No. 3414. Claimant: William Sutton Manners. Amount claimed: \$12,225.00. Amount awarded: \$2,640.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3417. Claimant: Sidney B. Laune. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3419. Claimant: Mrs. Kittie C. Warburton. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3424. Claimant: Albert W. Dillon. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3425. Claimant: Fannie E. McGraw. Amount claimed: \$6,000.00. Amount awarded: \$1,296.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3431. Claimant: Mrs. Kate L. Drayton. Amount claimed: \$17,110.00. Amount awarded: \$10,640.00 with interest, as provided in Section 7 of the Act, from August 30, 1927, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 3441. Claimant: George W. Cook. Amount claimed: \$55,600.00. Award: disallowed.

General Docket No. 3442. Claimant: George W. Cook. Amount claimed: \$9,334.96. Award: disallowed.

General Docket No. 3447. Claimant: George W. Cook. Amount claimed: \$8,757.60. Award: disallowed.

General Docket No. 3448. Claimant: C. K. Warren. Amount claimed: \$66,250.00. Amount awarded: \$43,088.74 with interest, as provided in Section 7 of the Act, from February 2, 1927.

General Docket No. 3449. Claimant: D. H. Inloes. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3450. Claimant: James Neef. Amount claimed: \$6,000.00. Amount awarded: \$1,280.00 with interest, as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3458. Claimant: Stephen D. Laing, Dana L. Weed and Frank L. Weed. Amount claimed: \$60,292.72. Amount awarded: \$38,042.72 with interest, as provided in Section 7 of the Act, from October 7, 1925.

General Docket No. 3460. Claimant: Mrs. Delores R. V. Newton. Amount claimed: \$440,000.00. Amount awarded: \$15,434.00 with interest, as provided in Section 7 of the Act, from August 15, 1925, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 3461. Claimant: Solomon Knight. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3464. Claimant: C. A. Vance and W. J. Hotchkiss. Amount claimed: \$46,445.00. Amount awarded: \$33,477.64 with interest, as provided in Section 7 of the Act, from November 25, 1925.

The interests of the respective claimants in the principal sum herein awarded are as follows: C. A. Vance, \$8,369.41; W. J. Hotchkiss, \$25,108.23.

General Docket No. 3472. Claimant: Adam E. Crumbley, Administrator of the Estate of Henry Crumbley, Deceased. Amount claimed: \$567.37. Amount awarded: \$565.67 with interest, as provided in Section 7 of the Act, from September 15, 1916.

General Docket No. 3505. Claimant: Sam Jones. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3518. Claimant: Mrs. Hanna Waring. Amount claimed: \$16,050.00. Amount awarded: \$3,464.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3520. Claimant: Sinaloa Land and Water Company. Amount claimed: \$470,073.81. Amount awarded: \$86,080.40 with interest, as provided in Section 7 of the Act, from January 1, 1922, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 3533. Claimant: Thomas A. Moody. Amount claimed: \$6,000.00. Amount awarded: \$1,296.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3533. Claimant: W. L. Southwick. Amount claimed: \$12,000.00. Amount awarded: \$2,560.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3533. Claimant: George L. Hockman. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3538. Claimant: Spurgeon McMurtrey. Amount claimed: \$800.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3540. Claimant: H. W. McVicar. Amount claimed: \$32,000.00. Award: disallowed.

General Docket No. 3541. Claimant: Ira C. Cunningham. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3544. Claimant: Richard G. Barrineau. Amount claimed: \$25,000.00. Amount awarded: \$1,665.00 without interest.

General Docket No. 3545 (part). Claimant: Emma Boss. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3545. Claimant: Albert Louis Kimber. Amount claimed: \$6,000.00. Amount awarded: \$1,296.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3545 (part). Claimant: F. L. Whiton. Amount claimed: \$9,000.00. Amount awarded: \$1,920.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3545 (part). Claimant: E. C. Whiton. Amount claimed: \$9,000.00. Amount awarded: \$1,920.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3557 (part). Claimant: Alfred M. Berry. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3557 (part). Claimant: C. H. Merrical. Amount claimed: \$18,000.00. Amount awarded: \$5,184.00 with interest as provided in Section 7 of the Act, from March 1, 1926.

General Docket No. 3557 (part). Claimant: Everett W. Dexter. Amount claimed: \$3,000.00. Amount awarded: \$640.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3557 (part). Claimant: E. A. Gentzel. Amount claimed: \$3,000.00. Amount awarded: \$648.00 with interest, as provided in Section 7 of the Act, from September 22, 1924.

General Docket No. 3560. Claimant Aimée Dutour de Rovzar. Amount claimed: \$12,375.00. Amount awarded: \$4,125.00 with interest, as provided in Section 7 of the Act, from December 6, 1926.

General Docket No. 3573. Claimant: Manuel H. Frietas, as Owner of American Fishing Vessel "Del Monte." Amount claimed: \$11,228.98. Amount awarded: \$11,228.92 with interest, as provided in Section 7 of the Act, from August 21, 1927.

General Docket No. 3596. Claimant: Mrs. T. G. Haley. Amount claimed: \$45,160.00. Amount awarded: \$1,400.00 with interest, as provided in Section 7 of the Act, from February 1, 1926, but without prejudice to any claims which may have accrued subsequent to August 30, 1927.

General Docket No. 3599. Claimant: Guerrero Iron and Timber Company. Amount claimed: \$6,380.00. Amount awarded: \$3,828.00 with interest, as provided in Section 7 of the Act, from August 7, 1925.

General Docket No. 3607. Claimant: Royal J. Bills. Amount claimed: \$360,750.00. Amount awarded: \$76,992.00 with interest, as provided in Section 7 of the Act, from September 2, 1924.

General Docket No. 3611 and 3550. Claimant: W. O. Jenkins. Amount claimed: \$371,340.00. Amount awarded: \$47,593.00 with interest, as provided in Section 7 of the Act, from January 1, 1926.

Agrarian Docket No. 1: Claimant: Luther J. Almand. Amount claimed: \$13,161.25. Amount awarded: \$11,531.00 with interest, as provided in Section 7 of the Act, from August 4, 1937.

Agrarian Docket No. 5. Claimant: Charles H. Skidmore. Amount claimed: \$9,127.00. Amount awarded: \$3,944.00 with interest, as provided in Section 7 of the Act, from October 21, 1936.

Agrarian Docket No. 7. Claimant: Waldo E. Bradford, Herbert S. Bradford, Frank Bradford, and Arthur Bradford. Amount claimed: \$20,000.00. Amount awarded: \$11,268.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Waldo H. Bradford, \$2,817.00; Herbert S. Bradford, \$2,817.00; Frank Bradford, \$2,817.00; Arthur Bradford, \$2,817.00.

Agrarian Docket No. 9. Claimant: Otto H. Herold and V. A. Smelker. Amount claimed: \$60,000.00. Amount awarded: \$33,803.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Otto H. Herold, \$22,535.33; V. A. Smelker, \$11,627.67.

Agrarian Docket No. 11. Claimant: Edward R. Jesson and Lee N. Jesson. Amount claimed: \$162,485.60. Amount awarded: \$30,368.00 with interest, as provided in Section 7 of the Act, from October 27, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: Edward R. Jesson, \$20,245.33; Lee N. Jesson, \$10,122.67.

Agrarian Docket No. 12. Claimant: James J. Ryan and William Ryan. Amount claimed: \$84,000.00. Amount awarded: \$47,324.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 16. Claimant: William Ryan and James J. Ryan. Amount claimed: \$62,000.00. Amount awarded: \$19,718.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 17. Claimant: William Schutte. Amount claimed: \$11,250.00. Amount awarded: \$6,310.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 18. Claimant: Z. O. Stocker. Amount claimed: \$320,575.78. Amount awarded: \$83,417.00 with interest, from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 19. Claimant: Gladys T. Waltz and Willard D. McLaurin. Amount claimed: \$71,200.00. Amount awarded: \$30,085.00 with interest, as provided in Section 7 of the Act, from January 5, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Gladys T. Waltz, \$10,028.00; Willard D. McLaurin, \$20,057.00.

Agrarian Docket No. 20. Claimant: Frank M. Manson, individually and as representative of Dayton E. Dalbey, and John G. George. Amount claimed: \$65,400.00. Amount awarded: \$36,845.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Frank M. Manson, \$20,264.75; John G. George, \$16,580.25.

Agrarian Docket No. 21. Claimant: The Moctezuma Copper Company. Amount claimed: \$12,135.00. Amount awarded: \$8,385.00 with interest, as provided in Section 7 of the Act, from June 23, 1937.

Agrarian Docket No. 23. Claimant: Florence G. Singletary, George C. Singletary, Margaret E. Singletary, and Harry C. Grigsby. Amount claimed: \$215,530.00. Amount awarded: \$96,700.68 with interest, as provided in Section 7 of the Act, from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Florence G. Singletary, \$24,175.17; George C. Singletary, \$24,175.17; Margaret E. Singletary, \$24,175.17; Harry C. Grigsby, \$24,175.17.

Agrarian Docket No. 27. Claimant: Mary Isadore C. de Rosales. Amount claimed: \$17,295.77. Award: disallowed.

Agrarian Docket No. 30. Claimant: Fred W. Dow. Amount claimed: \$69,149.38. Amount awarded: \$12,866.00 with interest, as provided in Section 7 of the Act, from August 19, 1936.

Agrarian Docket No. 31. Claimant: Isaac F. Tomlin, Jacob F. Tomlin, and Lawrence E. Sinclair. Amount claimed: \$26,848.08. Amount awarded: \$9,006.00 with interest, as provided in Section 7 of the Act, from May 19, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: Isaac F. Tomlin, \$3,002.00; Jacob F. Tomlin, \$3,002.00; Lawrence E. Sinclair, \$3,002.00.

Agrarian Docket No. 33. Claimant: Paul E. Nauschuetz. Amount claimed: \$14,923.00. Amount awarded: \$5,078.00 with interest, as provided in Section 7 of the Act, from June 29, 1929.

Agrarian Docket No. 34. Claimant: Louis O. Fullen and Rosemary V. F. Williams. Amount claimed: \$54,464.79. Amount awarded: \$49,892.95 with interest, as provided in Section 7 of the Act, from September 17, 1935.

The interests of the respective claimants in the principal sum herein awarded are as follows: Louis O. Fullen, \$33,261.97; Rosemary V. F. Williams, \$16,630.98.

Agrarian Docket No. 35. Claimant: Wirt G. Bowman. Amount claimed: \$187,840.00. Amount awarded: \$105,825.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 37. Claimant: William H. Richardson. Amount claimed: \$58,500.00. Amount awarded: \$32,958.00 with interest, as provided in Section 7 of the Act, from January 5, 1938.

Agrarian Docket No. 38. Claimant: Herbert D. Hickey. Amount claimed: \$18,322.82. Amount awarded: \$4,623.00 with interest, as provided in Section 7 of the Act, from November 21, 1936.

Agrarian Docket No. 39. Claimant: Hugh B. Evans and Victor R. Twist. Amount claimed: \$22,673.63. Amount awarded: \$7,955.00 with interest, as provided in Section 7 of the Act, from January 20, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: Hugh B. Evans, \$3,977.50; Victor R. Twist; or his estate, \$3,977.50.

Agrarian Docket No. 42. Claimant: Florence Ennis. Amount claimed: \$92,995.29. Amount awarded: \$48,177.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 44. Claimant: Richardson Brothers Company. Amount claimed: \$87,648.00. Amount awarded: \$43,768.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 45. Claimant: Mary Smith Sharpton, as representative of her minor daughter, Marylu Sharpton. Amount claimed: \$10,104.69. Amount awarded: \$5,634.00 with interest, as provided in Section 7 of the Act, from March 3, 1937.

Agrarian Docket No. 47. Claimant: Victor R. Twist. Amount claimed: \$32,025.48. Amount awarded: \$23,158.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 49. Claimant: Elizabeth Smith Sharpton. Amount claimed: \$9,724.55. Amount awarded: \$5,633.00 with interest, as provided in Section 7 of the Act, from March 3, 1937.

Agrarian Docket No. 52. Claimant: Alexander S. Sharpton. Amount claimed: \$9,789.86. Amount awarded: \$5,859.00 with interest, as provided in Section 7 of the Act, from March 3, 1937.

Agrarian Docket No. 54. Claimant: Craven E. McCarty and William C. Lucas. Amount claimed: \$27,117.50. Amount awarded: \$6,977.00 with interest, as provided in Section 7 of the Act, from December 15, 1933.

The interests of the respective claimants in the principal sum herein awarded are as follows: Craven E. McCarty, \$3,488.50; William C. Lucas, \$3,488.50.

Agrarian Docket No. 55. Claimant: G. Allan Hancock, Edmund A. Leeds, Emil A. Olson, and Leroy E. Sullivan. Amount claimed: \$99,840.11. Amount awarded: \$29,445.00 with interest, as provided in Section 7 of the Act, from July 16, 1934.

The interests of the respective claimants in the principal sum herein awarded are as follows: G. Allan Hancock, \$17,231.00; Edmund A. Leeds, \$1,357.00; Emil A. Olson, \$9,500.00; Leroy E. Sullivan, \$1,357.00.

Agrarian Docket No. 56. Claimant: John P. Maxwell. Amount claimed: \$67,895.82. Amount awarded: \$11,450.00 with interest, as provided in Section 7 of the Act, from November 19, 1934.

Agrarian Docket No. 58. Claimant: Estate of Charles H. McCullough. Amount claimed: \$64,040.53. Amount awarded: \$26,595.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 60. Claimant: Alexander S. Sharpton. Amount claimed: \$67,561.04. Amount awarded: \$25,047.00 with interest, as provided in Section 7 of the Act, from September 10, 1938.

Agrarian Docket No. 62. Claimant: Benjamin F. Moats. Amount claimed: \$25,629.15. Amount awarded: \$5,634.00 with interest, as provided in Section 7 of the Act, from November 5, 1935.

Agrarian Docket No. 65. Claimant: James A. Moseley. Amount claimed: \$39,910.00. Amount awarded: \$23,353.00 with interest, as provided in Section 7 of the Act, from January 16, 1930.

Agrarian Docket No. 67. Claimant: Robert Giffen Stewart. Amount claimed: \$29,716.40. Amount awarded: \$8,679.00 with interest, as provided in Section 7 of the Act, from June 18, 1935.

Agrarian Docket No. 68. Claimant: Robert Wright Stewart. Amount claimed: \$25,683.10. Amount awarded: \$6,854.00 with interest, as provided in Section 7 of the Act, from June 18, 1935.

Agrarian Docket No. 69. Claimant: Carolina C. Leuffer. Amount claimed: \$32,730.00. Amount awarded: \$2,305.00 with interest, as provided in Section 7 of the Act, from October 27, 1937.

Agrarian Docket No. 71. Claimant: Guillermo Fernandez. Amount

claimed: \$73,358.23. Amount awarded: \$44,880.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 72. Claimant: Harry Chandler and William H. Allen, Jr. Amount claimed: \$6,476,598.26. Amount awarded: \$2,807,441.10 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Harry Chandler, \$2,651,472.15; William H. Allen, Jr., or his estate, \$155,968.95.

Agrarian Docket No. 73. Claimant: Harry Chandler and William H. Allen, Jr. Amount claimed: \$232,233.14. Amount awarded: \$133,767.98 with interest, as provided in Section 7 of the Act, from April 28, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: Harry Chandler, \$126,336.42; William H. Allen, Jr., or his estate, \$7,431.56.

Agrarian Docket No. 74. Claimant: Henry A. Meyer, et al. Amount claimed: \$23,356.00. Amount awarded: \$2,581.00 with interest, as provided in Section 7 of the Act, from July 31, 1931.

The interests of the respective claimants in the principal sum herein awarded are as follows: Henry A. Meyer, \$716.94; Mary K. Pleak, \$716.94; Mary C. Beirne, \$430.18; Mrs. H. T. McCabe, Eric McCabe and Sylvia McCabe Matthews, as their interests may appear, \$716.94.

Agrarian Docket No. 76. Claimant: George T. Braniff. Amount claimed: \$241,315.52. Amount awarded: \$202,088.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 78. Claimant: Forest R. Lowrey and May Zacharie Brock. Amount claimed: \$87,652.42. Amount awarded: \$17,464.00 with interest, as provided in Section 7 of the Act, from September 22, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: Forest R. Lowrey, \$8,732.00; May Zacharie Brock, \$8,732.00.

Agrarian Docket No. 79. Claimant: W. O. Jenkins. Amount claimed: \$3,686,762.40. Amount awarded: \$2,270,510.43 with interest, from dates of expropriations, as provided in Section 7 of the Act aforementioned.

Agrarian Docket No. 82. Claimant: Wallace Caswell, Charles H. Caswell and Richard A. Caswell. Amount claimed: \$4,317.50. Amount awarded: \$1,106.00 with interest, as provided in Section 7 of the Act, from April 9, 1934.

Agrarian Docket No. 84. Claimant: Penn Mex Fuel Company. Amount claimed: \$66,794.12. Amount awarded: \$19,096.80 with interest, as provided in Section 7 of the Act, from January 9, 1930.

Agrarian Docket No. 85. Claimant: Margaret I. Reid Witts. Amount claimed: \$89,936.50. Amount awarded: \$25,957.00 with interest, as provided in Section 7 of the Act, from October 5, 1938.

Agrarian Docket No. 87. Claimant: Obispo Rubber Plantation Company. Amount claimed: \$7,901.17. Amount awarded: \$8,887.77 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 89. Claimant: The Laguna Company. Amount claimed: \$734,672.32. Amount awarded: \$107,605.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 91. Claimant: William Loftus, Edna L. Hiatt, Irvin C. Chapman, and Stern Realty Company. Amount claimed: \$341,092.30. Amount awarded: \$74,313.00 with interest, as provided in Section 7 of the Act, from May 19, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: William Loftus, \$18,578.25; Edna L. Hiatt, \$30,963.75; Irvin C. Chapman, \$12,385.50; Stern Realty Company, \$12,385.50.

Agrarian Docket No. 92. Claimant: Emily von Hiller. Amount claimed: \$279,277.71. Amount awarded: To Emily von Hiller the principal sum of \$46,977.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 93. Claimant: Lloyd A. Rone, Estate of Rudolph Hilker, Federico F. Niggli, and Estate of John W. Payne. Amount claimed: \$114,343.33. Amount awarded: \$71,385.79 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein

awarded are as follows: L. A. Rone, \$27,126.60; Estate of Rudolph Hilker, \$27,126.60; Federico F. Niggli, \$6,281.95; Estate of John W. Payne, \$10,850.64.

Agrarian Docket No. 94. Claimant: Nadine P. Miller, Irene Hughes Mathews, Charles H. Hughes, and Estate of Eva D. Austin. Amount claimed: \$196,477.02. Amount awarded: \$85,813.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Nadine P. Miller, \$47,598.00; Irene H. Mathews, \$37,214.00; Charles H. Hughes, \$286.00; Estate of Eva D. Austin, \$715.00.

Agrarian Docket No. 95. Claimant: Alexander S. Sharpton. Amount claimed: \$14,342.65. Amount awarded: \$8,282.00 with interest, as provided in Section 7 of the Act, from January 25, 1939.

Agrarian Docket No. 97. Claimant: Pauline Williams. Amount claimed: \$4,540.00. Amount awarded: \$2,302.00 with interest, as provided in Section 7 of the Act, from July 22, 1936.

Agrarian Docket No. 99. Claimant: Trustees of the Mexican Pacific Company. Amount claimed: \$140,752.66. Amount awarded: \$80,285.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 100. Claimant: Mrs. Kate Hart as Executrix of the Estate of Gaston Morris. Amount claimed: \$257,506.10. Amount awarded: \$77,431.00 with interest, as provided in Section 7 of the Act, from April 2, 1934.

Agrarian Docket No. 104. Claimant: The Motzorongo Company. Amount claimed \$1,168,872.95. Amount awarded: \$233,590.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 108. Claimant: Edward M. Watson. Amount claimed: \$13,016.52. Amount awarded: \$7,143.00 with interest, as provided in Section 7 of the Act, from July 20, 1938.

Agrarian Docket No. 109. Claimant: Charles Kennedy as Executor of the Estate of Concepcion P. Kennedy. Amount claimed: \$112,888.85. Amount awarded: \$51,510.00 with interest, as provided in Section 7 of the Act, from May 16, 1929.

Agrarian Docket No. 110. Claimant: Bertha P. Linga. Amount claimed: \$66,777.60. Amount awarded: \$30,918.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

Agrarian Docket No. 112. Claimant: Babicora Development Company. Amount claimed: \$88,135.18. Amount awarded: \$56,460.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 114. Claimant: Christian J. Stahly. Amount claimed: \$1,190.00. Amount awarded: \$361.00 with interest, as provided in Section 7 of the Act, from June 16, 1937.

Agrarian Docket No. 117. Claimant: Louisiana-Mexican Timber and Investment Company. Amount claimed: \$5,981.81. Amount awarded: \$2,335.00 with interest, as provided in Section 7 of the Act, from September 22, 1937.

Agrarian Docket No. 119. Claimant: Ernest S. Dickert, Myrtle Vogelsang, Nicholas Vogelsang, and Merlin A. Vogelsang. Amount claimed: \$48,249.24. Amount awarded: \$6,700.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Ernest S. Dickert, \$3,350.00; Myrtle Vogelsang, Merlin A. Vogelsang and Nicholas Vogelsang, as their interests may appear, \$3,350.00.

Agrarian Docket No. 120. Claimant: Mrs. Emma R. Seiler. Amount claimed: \$6,000.00. Amount awarded: \$2,116.00 with interest, as provided in Section 7 of the Act, from June 16, 1937.

Agrarian Docket No. 121. Claimant: Ethel Bradshaw McCann. Amount claimed: \$4,635.57. Amount awarded: \$3,790.00 with interest from dates of expropriations as provided in Section 7 of the Act aforementioned.

Agrarian Docket No. 123. Claimant: Compania de Cafe Esperanza. Amount claimed: \$20,069.00. Amount awarded: \$11,830.00 with interest, as provided in Section 7 of the Act, from November 18, 1936.

Agrarian Docket No. 124. Claimant: Frank L. Gilmore, as Trustee of the Guanajuato Power and Electric Company. Amount claimed: \$19,220.36.

Amount awarded: \$18,755.00 with interest, as provided in Section 7 of the Act, from November 30, 1936.

Agrarian Docket No. 127. Claimant: Charlotte C. Elsasser, Melville K. Weill, Pauline W. Berwin and Elizabeth W. Newman. Amount claimed: \$187,487.50. Amount awarded: \$59,409.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Charlotte C. Elsasser, \$30,306.00; Melville K. Weill, \$10,102.00; Elizabeth W. Newman, \$10,102.00; Pauline W. Berwin, \$8,899.00.

Agrarian Docket No. 129. Claimant: Clyde R. Burr. Amount claimed: \$351,651.82. Amount awarded: \$162,329.00 with interest, as provided in Section 7 of the Act, from July 6, 1934.

Agrarian Docket No. 137. Claimant: American stockholders of United Sugar Companies, S. A. Amount claimed: \$5,369,948.18. Amount awarded: \$2,113,466.63 with interest from dates of expropriations as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows:

(1) American stockholders of the United Sugar Companies, S. A., the principal sum of \$66,954.96, apportioned among individual stockholders as follows:

	Shares	
George Drake	95	\$1,281.89
Clarence F. Edmunds.....	1,002	13,520.53
Henry G. Gluyas.....	24	323.85
James M. Hassard.....	95	1,281.89
Sherwood Johnston (as Attorney-in-fact of Edith S. Hudson, individually, and as Executrix of the Estate of Charles Hudson).....		
Sherwood Johnston	184	2,432.81
Harold F. Jones.....	1,000	13,493.54
Alexander A. Martiney.....	1,421	19,174.32
Harold F. Jones (as Attorney-in-fact of Lucille Maurin)	417	5,626.81
Kathryn Sherwood Steel.....	90	1,214.42
Harold F. Jones (as Attorney-in fact of Marie Lewis Vezin).....	500	6,746.77
Marie Lewis Vezin).....	134	1,808.13

(2) Trustees of the Los Mochis Trust the principal sum of \$359,279.07, to be apportioned among individual American beneficiaries as follows:

	Shares	
William P. Briggs.....	400	\$5,397.42
George Drake	1,905	25,705.20
Clarence F. Edmunds.....	2,122	28,633.30
James M. Hassard.....	1,905	25,705.20
Edith S. Hudson, as Executrix of the Estate of Charles Hudson		
Sherwood Johnston	1,899	25,624.23
Harold F. Jones.....	1,500	20,240.31
Alexander A. Martiney.....	8,595	115,977.00
Hubert Mulkey	800	10,794.84
Ross L. Page.....	1,000	13,493.54
Kathryn Sherwood Steel.....	5,000	67,467.72
	1,500	20,240.31

(3) Trustees of the Westbourne Trust the principal sum of \$1,687,232.60, to be apportioned among individual American beneficiaries as follows:

	Shares	
William P. Briggs.....	300	\$4,048.06
George Drake	1,000	13,493.54
Clarence F. Edmunds.....	3,500	47,227.40
James M. Hassard.....	1,000	13,493.54
Dorothy Watson Hills.....	1,400	18,890.96
Edith S. Hudson, as Executrix of the Estate of Charles Hudson		
Agnes Sherwood Johnston.....	560	7,556.38
Gwendolyn P. Johnston.....	60	809.62
Sherwood Johnston	5,000	67,467.72
	75,060	1,012,825.33

	Shares	
Constance Johnston	10,000	\$134,935.43
Sherwood Johnston, Jr.....	10,000	134,935.43
Harold F. Jones.....	7,060	95,264.41
Emile Kunz	300	4,048.06
Agnes Sherwood Lamme.....	2,000	26,987.09
Alexander A. Martiney.....	3,500	47,227.40
Ross L. Page.....	500	6,746.77
Kathryn Sherwood Steel.....	3,500	47,227.40
Elin T. Swanstrom.....	300	4,048.06

Agrarian Docket No. 138. Claimant: Johnston Land and Fiber Company. Amount claimed: \$177,780.09. Amount awarded: \$23,028.00 with interest, as provided in Section 7 of the Act, from July 8, 1936.

Agrarian Docket No. 139. Claimant: William A. Metzger. Amount claimed \$12,334.24. Amount awarded: \$1,442.00 with interest, as provided in Section 7 of the Act, from December 1, 1937.

Agrarian Docket No. 140. Claimant: The Chase National Bank of the City of New York. Amount claimed: \$137,514.61. Amount awarded: \$59,181.69.

An appraisal in the amount of \$137,514.61, with interest, having been made of this claim by a Commissioner designated by the United States within the meaning of Section 4(a) of the Settlement of Mexican Claims Act of 1942 (56 Stat. 1058; 22 U.S.C., Sup. II, 661(c) 3; the claimant having been notified by registered mail as provided in Section 4(b) of the same Act of the appraisal so made; the appraisal disclosing that the claim was based solely upon an alleged impairment of mortgage security and that claimant was entitled to indemnification only "in an amount equal to the unpaid portions of the mortgage obligation"; the claimant having advised, in response to the aforesaid notification, that the principal debt has been paid and that an item of unpaid interest amounting to \$59,181.69 is the only remaining unpaid portion of the mortgage obligation; the claimant having been served with an order to show cause on or before November 1, 1943, why an award should be entered and certified in an amount in excess of \$59,181.69; and the claimant having failed to notify this Commission in writing that a petition for review will be filed as provided in subsection (c) of Section 4 of the same Act and having failed to show cause as aforesaid, an award is hereby entered on the basis of such appraisal, pursuant to Section 4(c) of the Act.

Agrarian Docket No. 141. Claimant: George Hearst. Amount claimed: \$74,698.03. Amount awarded: \$29,598.00 with interest, as provided in Section 7 of the Act, from May 19, 1937.

Agrarian Docket No. 142. Claimant: George Leslie Willson. Amount claimed: \$38,811.27. Amount awarded: \$14,579.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 143. James A. Murray. Amount claimed: \$30,856.33. Amount awarded: \$6,530.00 with interest, as provided in Section 7 of the Act, from June 30, 1937.

Agrarian Docket No. 144. Claimant: George Leslie Willson and William Wallace Murray. Amount claimed: \$59,890.14. Amount awarded: \$11,887.00 with interest, as provided in Section 7 of the Act, from October 29, 1935.

The interests of the respective claimants in the principal sum herein awarded are as follows: George Leslie Willson, \$10,598.00; William Wallace Murray, \$1,289.00.

Agrarian Docket No. 145. Claimant: Austin William Clark. Amount claimed: \$27,060.56. Amount awarded: \$5,400.00 with interest, as provided in Section 7 of the Act, from June 2, 1937.

Agrarian Docket No. 146. Claimant: Charley A. Cunningham as Administrator of the Estate of Arthur Cunningham. Amount claimed: \$19,154.93. Amount awarded: \$6,015.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 147. Claimant: Jane Weller Hill. Amount claimed: \$62,933.00. Amount awarded: \$20,708.00 with interest, as provided in Section 7 of the Act, from September 21, 1938.

Agrarian Docket No. 148. Claimant: Rafael Joseffy. Amount claimed: \$30,664.00. Amount awarded: \$7,436.00 with interest, as provided in Section 7 of the Act, from September 21, 1938.

Agrarian Docket No. 150. Claimant: Joseph A. Dahlgren as Executor of the Estate of Christine C. Dahlgren. Amount claimed: \$59,439.15. Amount awarded: \$11,696.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Arlie D. Harrison, \$3,119.00; Carlos Dahlgren, \$3,119.00; Joseph Dahlgren, \$3,119.00; Edith Sandberg, \$2,339.00.

Agrarian Docket No. 156. Claimant: Teodoro Thomae. Amount claimed: \$21,744.37. Amount awarded: \$19,378.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 163. Claimant: Laurence E. Thompson, as Administrator of the Estate of Charles F. Van de Water. Amount claimed: \$127,042.59. Amount awarded: \$63,640.00 with interest from dates of expropriations as provided in Section 7 of the Act.

Agrarian Docket No. 164. Claimant: Mahlon Floyd Bauchert and Luis Zork. Amount claimed: \$335,286.00. Amount awarded: \$32,674.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Mahlon F. Bauchert, or his estate, \$24,505.50; Luis Zork, \$8,168.50.

Agrarian Docket No. 165. Claimant: Mrs. Glen Pool, as Administratrix of the Estate of Bessie Ferguson. Amount claimed: \$5,880.00. Amount awarded: \$2,350.00 with interest, as provided in Section 7 of the Act, from March 8, 1939.

Agrarian Docket No. 166. Claimant: Beulah Robinson Lewis and Rose Robinson Lewis. Amount claimed: \$224,350.00. Amount awarded: \$31,096.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 167. Claimant: Joseph E. Wise and Lucia S. Wise. Amount claimed: \$17,442.00. Amount awarded: \$4,695.90 with interest, as provided in Section 7 of the Act, from October 5, 1938.

-The interests of the respective claimants in the principal sum herein awarded are as follows: Joseph E. Wise, \$4,655.61; Lucia S. Wise, \$40.29.

Agrarian Docket No. 168. Claimant: Estate of Sam Ravel, Louis Ravel and Arthur Ravel. Amount claimed: \$6,525.00. Amount awarded: \$1,776.00 with interest, as provided in Section 7 of the Act, from April 14, 1937.

Agrarian Docket No. 170. Claimant: Laurence E. Thompson as Administrator of the Estate of Charles F. Van de Water. Amount claimed: \$256,335.97. Amount awarded: \$100,915.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 173. Claimant: Pauline W. Goldsmith and Mrs. Jay B. Washer. Amount claimed: \$24,640.55. Amount awarded: \$6,453.00 with interest, from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 174. Claimant: Anna Pauline. Adeline P. Batchelor, and Maywood I. C. Green. Amount claimed: \$20,000.00. Amount awarded: \$11,268.00 with interest, as provided in Section 7 of the Act, from January 12, 1938.

The interests of the respective claimants in the principal sum herein awarded are as follows: Anna Pauline, \$5,859.36; Adeline P. Batchelor, \$2,704.32; Maywood I. C. Green, \$2,704.32.

Agrarian Docket No. 176. Claimant: Charles G. Newton. Amount claimed: \$140,272.13. Amount awarded: \$60,780.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 181. Claimant: Laurence E. Thompson as Administrator of the Estate of Charles F. Van de Water. Amount claimed: \$6,965.54. Amount awarded: \$4,775.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 183. Claimant: Ruth Finney Riddle. Amount claimed: \$26,356.25. Amount awarded: \$1,000.00 with interest, as provided in Section 7 of the Act, from June 4, 1934.

Agrarian Docket No. 184. Claimant: Paul J. Vollbrecht and the Estate of Carl Eisenhut. Amount claimed: \$17,339.72. Amount awarded: \$9,257.61 with interest, as provided in Section 7 of the Act, from March 11, 1936.

The interests of the respective claimants in the principal sum herein awarded are as follows: Paul J. Vollbrecht, \$6,004.91; Estate of Carl Eisenhut, \$3,252.70.

Agrarian Docket No. 185. Claimant: Mary J. Wagner, Executrix of the Estate of John E. Wagner. Amount claimed: \$58,972.25. Amount awarded: \$13,142.00 with interest, as provided in Section 7 of the Act, from February 1, 1935.

Agrarian Docket No. 186. Claimant: Frank E. Wilhelm. Amount claimed: \$2,154.57. Amount awarded: \$10,115.00 with interest, as provided in Section 7 of the Act, from February 11, 1935.

Agrarian Docket No. 193. Claimant: George B. Seely and John H. Wickard. Amount claimed: \$33,105.42. Amount awarded: \$15,382.00 with interest from dates of expropriations, as provided in Section 7 of the Act. The interests of the respective claimants in the principal sum herein awarded are as follows: George B. Seely, \$7,691.00; John H. Wickard, \$7,691.00.

Agrarian Docket No. 196. Claimant: Frederick J. Schroeder. Amount claimed: \$44,123.09. Amount awarded: \$1,915.00 with interest, as provided in Section 7 of the Act, from March 5, 1934.

Agrarian Docket No. 197. Claimant: Dora A. Newton. Amount claimed: \$49,235.20. Amount awarded: \$39,232.00 with interest, as provided in Section 7 of the Act.

Agrarian Docket No. 198. Claimant: San Lorenzo Sugar Company. Amount claimed: \$804,523.06. Amount awarded: \$165,896.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 199. Claimant: Joliet Tropical Plantation Company. Amount claimed: \$284,042.92. Amount awarded: \$24,387.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 201. Claimant: Casa del Arroyo Company. Amount claimed: \$12,761.50. Amount awarded: \$1,831.00 with interest, as provided in Section 7 of the Act, from June 16, 1937.

Agrarian Docket No. 208. Claimant: Frank G. McCann, and the Estate of Warner McCann. Amount claimed: \$32,470.37. Amount awarded: \$24,701.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Frank G. McCann, \$13,072.67; Estate of Warner McCann, \$11,628.33.

Agrarian Docket No. 209. Claimant: Intercontinental Rubber Company. Amount claimed: \$184,004.98. Amount awarded: \$80,612.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 210. Claimant: Charles Ryan Price and Hazel French Kuehn. Amount claimed: \$17,297.00. Award: disallowed.

Agrarian Docket No. 213. Claimant: Kansas and Mexico Land Company. Amount claimed: \$13,344.61. Amount awarded: \$6,684.00 with interest from dates of expropriations, as provided in Section 7 of the Act aforementioned.

Agrarian Docket No. 214. Claimant: Mrs. Clara R. Hammond, as Trustee of the Mexico Land Company. Amount claimed: \$120,200.00. Amount awarded: \$9,099.00 with interest, as provided in Section 7 of the Act, from October 8, 1935.

Agrarian Docket No. 215. Claimant: El Favor Mining Company. Amount claimed: \$52,807.98. Amount awarded: \$3,318.00 with interest, as provided in Section 7 of the Act, from September 30, 1936.

Agrarian Docket No. 216. Claimant: Central Hanover Bank and Trust Company, as Trustee for the Bondholders of the Fuente Coal Company. Amount claimed: \$9,784.30. Amount awarded: \$9,250.00 with interest, as provided in Section 7 of the Act, from December 19, 1930.

Agrarian Docket No. 217. Claimant: United States and Mexico Realty Company. Amount claimed: \$6,732.40. Amount awarded: \$6,732.40 with interest, as provided in Section 7 of the Act, from September 16, 1936.

Agrarian Docket No. 218. Claimant: Joe M. Higginbotham, Cecil Higginbotham, J. L. Higginbotham, and John T. Higginbotham. Amount claimed: \$376,474.86. Amount awarded: \$68,518.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 219. Claimant: Esther Ibarra Newton. Amount claimed: \$1,886.53. Amount awarded: \$1,079.00 with interest, as provided in Section 7 of the Act, from August 4, 1937.

Agrarian Docket No. 220. Claimant: Emma von Vieland Thompson.

Amount claimed: \$31,134.25. Amount awarded: \$31,134.25 with interest, as provided in Section 7 of the Act, from August 26, 1936.

Agrarian Docket No. 222. Claimant: Cora Alice Munro Lee. Amount claimed: \$478,212.31. Amount awarded: \$69,585.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 223. Claimant: James P. Carr as Executor of the Will of James Carr. Amount claimed: \$10,109.00. Amount awarded: \$2,600.00 with interest, as provided in Section 7 of the Act, from July 21, 1937.

Agrarian Docket No. 224. Claimant: Oscar Newton. Amount claimed: \$2,236.11. Amount awarded: \$1,310.00 with interest, as provided in Section 7 of the Act, from August 4, 1937.

Agrarian Docket No. 225. Claimant: Robert F. Willy. Amount claimed: \$24,244.00. Amount awarded: \$3,087.00 with interest, as provided in Section 7 of the Act, from December 19, 1932.

Agrarian Docket No. 229. Claimant: Eloisa Tays Lambert. Amount claimed: \$6,266.00. Amount awarded: \$1,586.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 230. Claimant: Eugene Tays. Amount claimed: \$4,610.00. Amount awarded: \$695.00 with interest, as provided in Section 7 of the Act, from September 21, 1938.

Agrarian Docket No. 231. Claimant: Lewis A. Hohstadt as Administrator of the Estate of John F. Hohstadt. Amount claimed: \$13,955.58. Amount awarded: \$3,735.00 with interest, as provided in Section 7 of the Act, from June 3, 1936.

Agrarian Docket No. 233. Claimant: F. M. B. McElroy. Amount claimed: \$11,076.00. Amount awarded: \$669.00 with interest, as provided in Section 7 of the Act, from October 27, 1937.

Agrarian Docket No. 234. Claimant: Coapa Development Company. Amount claimed: \$33,225.85. Amount awarded: \$11,180.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 236. Claimant: Leroy Little. Amount claimed: \$19,000.00. Amount awarded: \$4,924.00 with interest, as provided in Section 7 of the Act, from May 17, 1937.

Agrarian Docket No. 237. Claimant: Alfonso Rosales. Amount claimed: \$13,466.93. Award: disallowed.

Agrarian Docket No. 238. Claimant: Blanche K. Jackson. Amount claimed: \$425.00. Award: disallowed.

Agrarian Docket No. 239. Claimant: H. G. Cameron & Co. Amount claimed: \$9,000.00. Award: disallowed.

Agrarian Docket No. 240. Claimant: Isaac V. Vela and Raymundo Vela. Amount claimed: \$27,374.00. Amount awarded: \$4,893.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 241. Claimant: John De Land, et al., as Trustees of the Chacamax Land Development Company. Amount claimed: \$750,000.00. Amount awarded: \$22,031.00 with interest, as provided in Section 7 of the Act, from August 27, 1934.

Agrarian Docket No. 244. Claimant: Mariana Lanphar, on behalf of the Estate of William V. Lanphar. Amount claimed: \$78,500.00. Amount awarded: \$8,627.00 with interest, as provided in Section 7 of the Act, from June 4, 1938.

Agrarian Docket No. 245. Claimant: Mrs. Julia V. Vought, as Administratrix of the Estate of Milton I. Vought, and on behalf of the Estate of John W. Warren, Robert L. Warren, and Mrs. Eleanor W. Magruder. Amount claimed: \$324,750.00. Amount awarded: \$3,857.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Estate of Milton I. Vought, \$1,766.51; Estate of John W. Warren, \$838.51; Robert L. Warren, \$686.93; Eleanor W. Magruder, \$565.05.

Agrarian Docket No. 246. Claimant: Julia V. Vought, as Administratrix of the Estate of Milton I. Vought. Amount claimed: \$111,045.92. Amount awarded: \$9,316.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 249. Claimant: Continental Land and Investment

Company. Amount claimed: \$14,235.00. Amount awarded: \$4,000.00 with interest, as provided in Section 7 of the Act, from August 26, 1936.

Agrarian Docket No. 250. Claimant: Andrew Sneva. Amount claimed: \$32,122.65. Amount awarded: \$8,845.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 251. Claimant: John Drayton and Mrs. Mae Drayton. Amount claimed: \$120,000.00. Amount awarded: \$16,662.00 with interest, as provided in Section 7 of the Act, from December 20, 1928.

The interests of the respective claimants in the principal sum herein awarded are as follows: John Drayton, \$8,331.00; Mrs. Mae Drayton, \$8,331.00.

Agrarian Docket No. 257. Claimant: J. M. Hotchkiss: Amount claimed: \$94,412.00. Award: disallowed.

Agrarian Docket No. 259. Claimant: Laura Newton del Valle as Executrix of the Will of Dolores R. Newton. Amount claimed: \$1,288,487.50. Amount awarded: \$21,141.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 260. Claimant: Agua Duena Sugar Company and Alfred P. Burroughs. Amount claimed: \$339,841.12. Amount awarded: \$27,451.52 with interest from dates of expropriations, as provided in Section 7 of the Act.

The interests of the respective claimants in the principal sum herein awarded are as follows: Agua Buena Sugar Company, \$27,290.70; Alfred P. Burroughs, \$160.82.

Agrarian Docket No. 260A. Claimant: John F. Penrose. Amount claimed: \$122,747.51. Amount awarded: \$10,410.00 with interest from dates of expropriations, as provided in Section 7 of the Act.

PETITION NOT FILED AFTER NOTICE

PETITION NOT FILED AFTER NOTICE

An appraisal having been made of each of the following claims by a Commissioner designated by the United States within the meaning of Section 4 (a) of the Settlement of Mexican Claims Act of 1942, each claimant or his attorney having been notified by registered mail as provided in Section 4 (b) of the same Act of the appraisal so made, and the claimant having in each case notified the Commission that a petition for review would be filed and having thereafter failed to file such petition within the period prescribed pursuant to subsection (c) of Section 4 of the same Act, awards on the bases of the respective appraisals were entered pursuant to Section 4 (c) of the Act, as follows:

General Docket No. 215. Claimant: P. Pastene & Company, Inc. Amount claimed: \$292,318.22. Amount awarded: \$75,000.00, without interest.

General Docket No. 341. Claimant: J. L. Burt and A. A. Neil. Amount claimed: \$11,701.00. Amount awarded: \$8,782.23 with interest, as provided in Section 7 of the Act, from September 15, 1916.

The interests of the respective claimants in the principal sum herein awarded are as follows: J. L. Burt, \$4,539.22; A. A. Neil, \$4,243.01.

General Docket No. 410. Claimant: Manuela Valera Budrow. Amount claimed: \$904.80. Award: disallowed.

General Docket No. 413. Claimant: L. A. Moffett. Amount claimed: \$70,000.00. Amount awarded: \$2,760.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 426. Claimant: Robert Burhans, Jr. Amount claimed: \$139,938.09. Award: disallowed.

General Docket No. 631. Claimant: Arthur J. Stevens and H. Snowden Marshall, Receivers for Island Oil and Transport Corporation. Amount claimed: \$339,430.00. Amount awarded: \$61,079.04 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 639 (part). Claimant: Willis F. Beal, John Belcome (Belcove), Samuel N. Bennett, Mary E. Boyd, William H. Chowning, Edward L. Crane, O. V. Darling, William H. DeBerry, Thomas L. DeSpain, A. J. Elliott, Bessie Escher, Lucy J. Farr, George Fishbaugh, Lucien L. Forrester, Minerva E. Gardner, Ray C. Griswold, Drue C. Harrington, Nellie J. Hart, Martha R. Havens, James H. Hobbs, B. F. Hopkins, John W. Huff, Alfred D. Hull, E. G. Irwin, A. N. Jones, Porter V. Jones, Archer C. Jordan, Thomas A. Jordan, Morton Lyall, Thomas Lyall, Charles B. McCain, John W. Martin, Edgar L. Maydole, Moore Brothers, Squire Monroe, Samuel L. Packwood, Ada E. Parsons, Charlotte M. Preston, Fannie A. Salisbury, Marion N. Salisbury, P. F. Schaniel, Jones & Schaniel, A. P. Schlagel, Don J. Snow, Peter J. Storms, Martha L. Thielman, Robert H. Thielman, Frank J. Thompson, James F. Thompson, Royal T. Thompson, Thompson Brothers, H. P. Underwood, A. C. Vaughn, John C. Vaughn, Weed Brothers, Heber A. Wells, John Williams, Mulford Winslow, August V. Wulff, Charles E. Yarwood. Amount claimed: \$393,581.00. Award: disallowed.

General Docket No. 774. Claimant: R. C. Traweek (Trawuk). Amount claimed: \$520.00. Award: disallowed.

General Docket No. 1053. Claimant: John A. Beckett. Amount claimed: \$1,490.00. Award: disallowed.

General Docket No. 1365. Claimant: International Land and Live Stock Company. Amount claimed: \$864,613.40. Amount awarded: \$99,403.98 with interest, as provided in Section 7 of the Act, from April 5, 1922.

General Docket No. 1557. Claimant: Lucius H. Browne. Amount claimed: \$33,360.00. Award: disallowed.

General Docket No. 1578. Claimant: Charles C. Jones. Amount claimed: \$35,040.00. Award: disallowed.

General Docket No. 1617. Claimant: Andrew J. Davenport. Amount claimed: \$7,240.00. Award: disallowed.

General Docket No. 1632 and 1633. Claimant: James Harrison, John Harrison. Amount claimed: \$24,640.00. Award: disallowed.

General Docket No. 1685. Claimant: James Power. Amount claimed: \$497,920.00. Award: disallowed.

General Docket No. 1717. Claimant: Francis M. Ryder. Amount claimed: \$13,900.00. Award: disallowed.

General Docket No. 1739. Claimant: L. A. Franks. Amount claimed: \$27,000.00. Award: disallowed.

General Docket No. 1767. Claimant: Jerry J. Ellis. Amount claimed: \$135,420.00. Award: disallowed.

General Docket No. 1802. Claimant: A. C. Page. Amount claimed: \$5,000.00. Award: disallowed.

General Docket No. 1880. Claimant: United Cigarette Machine Company, Incorporated. Amount claimed: \$9,200.00. Award: disallowed.

General Docket No. 1906. Claimant: Pauline Williams, Administratrix of the Estate of Edward Williams, deceased. Amount claimed: \$49,663.43. Amount awarded: \$23,924.95 with interest, as provided in Section 7 of the Act, from January 1, 1927.

General Docket No. 2067. Claimant: Palomas Land and Cattle Company. Amount claimed: \$4,175,727.71. Amount awarded: \$1,686,056.00, without interest.

General Docket No. 2145. Claimant: Perley Morse. Amount claimed: \$12,796.39. Award: disallowed.

General Docket No. 2344. Claimant: Cortez-Aguada Petroleum Corporation. Amount claimed: \$1,898,476.14. Award: disallowed.

General Docket No. 2486. Claimant: George A. Ferguson and James R. Monk. Amount claimed: \$37,750.00. Amount awarded: \$10,000.00 with interest, as provided in Section 7 of the Act, from November 21, 1924.

General Docket No. 2546. Claimant: Orin Drake. Amount claimed: \$32,690.00. Award: disallowed.

General Docket No. 2596. Claimant: David Talman. Amount claimed: \$6,510.00. Award: disallowed.

General Docket No. 3079. Claimant: Edgar L. Mattson. Amount claimed: \$25,000.00. Amount awarded: \$2,112.00 with interest, as provided in Section 7 of the Act, from November 26, 1924.

General Docket No. 3462. Claimant: Intercontinental Rubber Company. Amount claimed: \$242,364.88. Award: disallowed.

Agrarian Docket No. 13. Claimant: Ramon G. Aguirre. Amount claimed: \$18,120.28. Amount awarded: \$2,540.00 with interest, from dates of expropriations as provided in Section 7 of the Act.

Agrarian Docket No. 96. Claimant: W. M. Stafford and Edna G. Stafford. Amount claimed: \$36,036.99. Amount awarded: \$4,437.54 with interest, as provided in Section 7 of the Act, from May 19, 1937.

The interests of the respective claimants in the principal sum herein awarded are as follows: W. M. Stafford, \$2,243.70; Edna G. Stafford, \$2,193.84.

Agrarian Docket No. 111. Claimant: Donald M. Street. Amount claimed: \$113,421.65. Amount awarded: \$40,811.00 with interest, from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 159. Claimant: Amparo Mining Company. Amount claimed: \$38,559.00. Amount awarded: \$5,971.00 with interest, as provided in Section 7 of the Act, from November 13, 1936.

Agrarian Docket No. 162. Claimant: Lorena Sidney Tapper, individually and as Executrix of the Estate of William R. Tapper, deceased. Amount claimed: \$52,514.00. Amount awarded: \$5,711.00 with interest, as provided in Section 7 of the Act, from August 18, 1934.

Agrarian Docket No. 200. Claimant: Joel M. Roberts and J. L. Lupton as Trustees of The German-American Coffee Company. Amount claimed: \$1,000,000.00. Amount awarded: \$134,746.00 with interest, from dates of expropriations, as provided in Section 7 of the Act.

Agrarian Docket No. 253. Claimant: Albert C. Kinnard as Administrator of the Estate of Joseph W. Kinnard. Amount claimed: \$50,207.00. Amount awarded: \$6,073.00 with interest, as provided in Section 7 of the Act, from February 23, 1938.

Agrarian Docket No. 256. Claimant: Enolia Gorham Brothers, as Administratrix of the Estates of Franklin Pierce Gorham and Sarah Ann Gorham. Amount claimed: \$19,211.00. Award: disallowed.

The below-listed claims, commonly known as Texas cattle claims, are before the Commission on petitions for review under Section 1 of the Settlement of Mexican Claims Act of 1942.

There is no evidence of the American citizenship of the original claimants except their own unsupported statements. Therefore, the petitions must be denied.

General Docket No. 1475. Claimant: William Gamble. Amount claimed: \$47,576.00. Award: disallowed.

General Docket No. 1719. Claimant: Rafael Relles. Amount claimed: \$2,875.00. Award: disallowed.

General Docket No. 1722. Claimant: L. T. Tucker. Amount claimed: \$17,630.00. Award: disallowed.

General Docket No. 3111. Claimant: James Dawson. Amount claimed: \$26,040.00. Award: disallowed.

SERIES B DECISIONS: PETITIONS FOR REVIEW DENIED

SERIES B DECISIONS: PETITIONS FOR REVIEW DENIED

The below-listed claims, commonly known as Texas Cattle Claims, are before this Commission on petitions for review under section 4 of the Settlement of Mexican Claims Act of 1942.

The evidence in these claims does not meet the requirements as to proof which are set forth on page 20 of the Commission's General Memorandum Opinion on Texas Cattle Claims. The proof in each is insufficient to establish that the loss of claimant's livestock was the proximate result of a raid or raids from Mexico. There is no proof as to raids on claimant's ranch or livestock. Neither is there proof that his cattle or their hides were seen in Mexico or that his cattle were driven toward or into Mexico. Accordingly, the petitions for review must be denied.

General Docket No. 1373. Claimant: John A. Williams. Amount claimed: \$2,500.00. Award: disallowed.

General Docket No. 1389. Claimant: Thomas Pugh. Amount claimed: \$17,500.00. Award: disallowed.

General Docket No. 1390. Claimant: Patrick Pugh. Amount claimed: \$77,000.00. Award: disallowed.

General Docket No. 1427. Claimant: Thomas J. Noakes. Amount claimed: \$28,170.00. Award: disallowed.

General Docket No. 1522. Claimant: Andrew C. Carothers. Amount claimed: \$38,150.00. Award: disallowed.

General Docket No. 1554. Claimant: William J. J. Scroggins. Amount claimed: \$42,520.00. Award: disallowed.

General Docket No. 1558. Claimant: B. A. Franklin. Amount claimed: \$53,090.00. Award: disallowed.

General Docket No. 1569. Claimant: Calvin Musgrave. Amount claimed: \$75,000.00. Award: disallowed.

General Docket No. 1592. Claimant: Peterson Borroum. Amount claimed: \$20,890.00. Award: disallowed.

General Docket No. 1609. Claimant: Henry B. Carr. Amount claimed: \$4,560.00. Award: disallowed.

General Docket No. 1610. Claimant: Joel Cherry. Amount claimed: \$531.00. Award: disallowed.

General Docket No. 1627. Claimant: W. N. Gates. Amount claimed: \$35,000.00. Award: disallowed.

General Docket No. 1637. Claimant: John A. Jones. Amount claimed: \$14,420.00. Award: disallowed.

General Docket No. 1638. Claimant: William M. Jones. Amount claimed: \$40,630.00. Award: disallowed.

General Docket No. 1653. Claimant: John Reinhart. Amount claimed: \$21,960.00. Award: disallowed.

General Docket No. 1668. Claimant: Peter Tumlinson and Peter F. Tumlinson. Amount claimed: \$183,500.00. Award: disallowed.

General Docket No. 1673. Claimant: Emily Walker. Amount claimed: \$42,980.00. Award: disallowed.

General Docket No. 1674. Claimant: Noah C. Webster. Amount claimed: \$68,340.00. Award: disallowed.

General Docket No. 1679. Claimant: R. E. Booth. Amount claimed: \$30,975.00. Award: disallowed.

General Docket No. 1688. Claimant: Thomas J. Heard. Amount claimed: \$64,130.00. Award: disallowed.

General Docket No. 1723. Claimant: Pella Bickford. Amount claimed: \$74,920.00. Award: disallowed.

General Docket No. 1725. Claimant: William Kuykendall. Amount claimed: \$29,500.00. Award: disallowed.

General Docket No. 1728. Claimant: John W. Rowland. Amount claimed: \$6,770.00. Award: disallowed.

General Docket No. 1738. Claimant: Daniel C. Franks. Amount claimed: \$26,000.00. Award: disallowed.

General Docket No. 1740. Claimant: J. W. McMains. Amount claimed: \$77,000.00. Award: disallowed.

General Docket No. 1772. Claimant: Herman Jonas. Amount claimed: \$425.00. Award: disallowed.

General Docket No. 1783. Claimant: Mrs. E. M. Barlow. Amount claimed: \$47,320.00. Award: disallowed.

General Docket No. 1784. Claimant: John Johnson Burris. Amount claimed: \$11,500.00. Award: disallowed.

General Docket No. 1796. Claimant: T. H. Kuykendall. Amount claimed: \$31,360.00. Award: disallowed.

General Docket No. 1803. Claimant: J. J. Roberts. Amount claimed: \$6,875.00. Award: disallowed.

General Docket No. 1805. Claimant: John C. Steen. Amount claimed: \$33,230.00. Award: disallowed.

General Docket No. 1960. Claimant: Monroe Upton. Amount claimed: \$10,740.00. Award: disallowed.

General Docket No. 2481. Claimant: George W. Brown. Amount claimed: \$21,850.00. Award: disallowed.

General Docket No. 2487. Claimant: T. M. Dorsett. Amount claimed: \$14,740.00. Award: disallowed.

General Docket No. 2491. Claimant: Josephine L. Stockings. Amount claimed: \$2,130.00. Award: disallowed.

General Docket No. 2539. Claimant: B. C. Brashear. Amount claimed: \$7,640.00. Award: disallowed.

General Docket No. 2547. Claimant: L. M. Rogers. Amount claimed: \$34,590.00. Award: disallowed.

General Docket No. 2589. Claimant: James N. McAda. Amount claimed: \$51,130.00. Award: disallowed.

General Docket No. 2597. Claimant: Aaron Burleson. Amount claimed: \$18,000.00. Award: disallowed.

General Docket No. 2659. Claimant: James H. Dolan. Amount claimed: \$25,310.00. Award: disallowed.

General Docket No. 2751. Claimant: Griffin E. Nichols. Amount claimed: \$15,100.00. Award: disallowed.

DECISION No. 19-B

General Docket No. 13. Claimant: Charles P. Rogers and Oliver C. Carpenter, in their own right and as liquidating partners of the firm of Holmes, Rogers and Carpenter. Amount claimed: \$16,762.96. Award: disallowed.

On Petition for Review:

The claim is for \$16,762.96 and is predicated upon an alleged denial of justice. Claimants and decedent Holmes formed a partnership in 1910 for the practice of law in New York under the firm name of Holmes, Rogers and Carpenter. In 1911 the Mexican National Packing Company, Ltd., a Maine corporation doing business in Mexico, and one John W. de Kay executed their promissory note to the firm in the sum of \$25,000.00, payable four months after date, and deposited as collateral therefor a certificate representing \$100,000.00 par value of the National Packing Company's first mortgage bonds. The makers having defaulted on the note, the bonds were sold at public auction for \$10,000.00 and the firm obtained a judgment against the National Packing Company in the Supreme Court of New York County for the unsatisfied balance with interest. Thereafter the firm brought suit on the New York judgment in the Second Civil Court of Mexico City and this court, on May 15, 1914, confirmed the judg-

ment and ordered execution against the debtor in the amount herein claimed. The debtor took an appeal and while this appeal was pending Carranza forces occupied Mexico City. Carranza decrees avoided judicial acts of the previous administration, provided for the revalidation of judgments, and closed the courts. The courts were not reopened until 1916. Claimants took no steps to have their judgment revalidated. The claim alleges international responsibility in consequence of the invalidation of judicial acts and the taking over of National Packing Company's assets. In January and March of 1914, John W. de Kay had transferred a controlling interest in the National Packing Company to the Mexican Government.

In a claim filed in behalf of John W. de Kay, General Docket No. 2718, Commissioner Underwood reviewed at length the history of National Packing Company and concluded that it was insolvent in fact when taken over by the Mexican Government. In the instant claim Commissioner Underwood concluded that claimants had failed to prove that they would have had anything on the Mexican judgment even if it had gone to execution. Accordingly, he disallowed the claim.

On petition for review, claimants principal contentions are (1) that Mexican National Packing Company, Ltd., had unpledged assets subject to execution, (2) that execution would have been unavailing only because these assets had been taken over by the Mexican Government, (3) that the invalidation of their judgment constituted a denial of justice, and (4) that they were not required to attend further proceedings after the invalidation of their judgment and the taking over of assets from which the judgment should have been satisfied.

It may be noted at the outset that apart from treaty there is no international obligation to recognize foreign judgments. Presumably the judgment obtained in the Second Civil Court of Mexico City was rendered on the basis of comity. It is to be noted further that the suspension of ordinary judicial processes in an area of actual or threatened hostilities is matter of unquestioned right. It appears that after appeal had been taken the courts were closed in consequence of continued revolutionary disturbance. It appears further that no effort was made thereafter to have the judgment revalidated. Waiver of the requirement that local remedies be exhausted as a condition precedent to the validity or allowance of any claim (see General Claims Convention, September 8, 1923, Art. V) was certainly not intended to constitute a waiver of other requisites of international responsibility. In the absence of a showing that it was not possible to have the Mexican judgment revalidated, or that revalidation was improperly frustrated by the Mexican Government, it cannot be said that there was a denial of justice. In any event, as Commissioner Underwood pointed out, the claimants have not carried the burden of showing that they suffered a loss in consequence of the alleged denial of justice. The record in the claim of John W. de Kay lends no support to the contention that Mexican National Packing Company had unpledged assets subject to execution. On the

contrary this record indicates that the Company was insolvent in fact when taken over by the Mexican Government. See claim of John W. de Kay, General Docket No. 2178, Decision No. 18, Series B, June 9, 1944. Petitioners have failed to make *prima facie* showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 15-B

General Docket No. 44. Claimant: Guerrero Development Company. Amount claimed: \$115,149.00. Award: disallowed.

On Petition for Review:

This claim arises from the forfeiture of a mining property situated in the District of Taxco, State of Guerrero. Claimant owned the stock of the Mexican corporation which held the mining concession. Under Mexican law the corporation had a defeasible title which could be forfeited for non-payment of the annual mining tax. In 1912, in consequence of revolutionary disturbances, the corporation abandoned operations and withdrew its employees. The Special Mexican Claims Commission made an award for property losses and losses due to forced abandonment. Report to the Secretary of State, Decision No. 575, p. 446. A Carranza decree of June 19, 1915, provided that taxes which taxpayers were obliged to pay prior to the occupation of a locality by constitutionalist forces would be condoned, that taxes collected after such occupation would be without penalty if paid within a month, and that no payments to rebel authorities for the period after such occupation would be recognized. A Carranza decree of May 1, 1916, extended to June 30, 1916, the period in which tax payments could be made without forfeiture. Claimant paid no taxes after 1916. A Carranza decree of 1918 superseded prior decrees and required that mining taxes be paid in instalments in default of which concessions would be forfeited. See Codification Minera (1921), p. 290. The corporation's concession was forfeited in 1919. In 1921 tender of delinquent taxes was refused and the Government declined to restore the concession. Claim was filed in 1925. Commissioner Underwood concluded that the claim should be disallowed.

It was contended in behalf of claimant, and the contention is renewed on petition for review, that the Carranza Government was never in effective occupation of the District of Taxco. Commissioner Underwood concluded that this was not proved. Memorandum Decision, p. 12. Whether proved or not, the short answer to the contention is that the Carranza Government was in effective occupation of most of Mexico, including Mexico City, during most of the period in question and was recognized by the United States as the *de facto* government of Mexico in 1915 and as the *de jure* government in 1917. See Memorandum Decision, p. 15: Oetjen v. Central Leather Co., 246 U. S. 297. It appears that resumption of payments to the Carranza Government at any time prior to the expiration of the periods provided by the decree of 1918 would have safeguarded against forfeiture. Payments

either to a *de facto* regime in control of the District of Taxco, if such regime existed, or to the recognized government in Mexico City, might have established a basis for reclamation if forfeiture were decreed notwithstanding. In the absence of such payments, or tender thereof, there is no basis for reclamation.

It is unnecessary to comment upon other matters discussed in the petition for review. The petition is devoted largely to matters which are irrelevant or to captious criticism of selected statements taken from the text of the Commissioner's Memorandum Decision. Claimant appears to have devoted itself to everything except the essential issue, viz, the legality of the forfeiture of 1919. It has failed to make a *prima facie* showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 28-B

General Docket No. 587. Claimant: J. L. Burt. Amount claimed: \$64,303.60. Amount awarded: \$18,880.00.

On Petition for Review:

This is a claim for losses resulting to claimant as a stockholder in four Mexican banks of issue.

He was the owner of 50 shares of Banco de Durango, 744 shares of Banco de Jalisco, 100 shares of Banco del Estado de Mexico, and 25 shares of Banco de Tamaulipas, a total of 919 shares.

The par value of these shares was 100 pesos each, but there is no evidence in the record that indicates the price paid for these shares or the book value thereof at the date of the acts of the Mexican Government which are alleged as the basis of the claim.

217 shares of Banco de Jalisco were acquired in 1908, but all the remainder of the shares were acquired at various dates in 1911, 1912 and 1913, which was subsequent to the beginning of the Revolutionary Period in Mexico.

All said banks were organized and operated in accordance with the Law of March 18, 1897. All were private banks authorized to do a general banking business and to issue bills or notes for general circulation. Each was required to carry a metallic reserve of coin or bullion equal to one-half of the bills issued by it.

Each of the banks had been in successful and profitable operation and paying regular and substantial dividends from 1900 through 1912. It must be noted however that the dividends for the year 1912 were less than one-half of the average of dividends paid during the period above mentioned. The natural implication is that the business of the banks was beginning to suffer from the disturbed conditions incident to the continuing revolutionary period which had begun in 1910.

In February 1913 President Madero was overthrown by General Huerta, and in May of that year Huerta began his program of issuing bonds and forcing the banks to subscribe to large amounts of them. There was no voluntary market for such bonds and these forced loans were the only source of funds

available to Huerta in his effort to maintain the power which he had seized by military force.

Huerta in turn was overthrown by the forces led by General Carranza in July of 1914, and after frequent changes of occupation Mexico City was finally occupied by Carranza in July 1915 and his government was recognized by the United States on October 19, 1915.

In the meantime the peso had fallen to 36 in August 1913 and to 24 in August 1914. Its value prior to 1913 had been 50 cents in U. S. currency.

In September 1914, during a temporary occupation of Mexico City by Carranza, he issued unsecured paper money to the amount of 130,000,000 pesos, and in June 1916 the Carranza administration put out another issue of paper which probably reached a total of 750,000,000 pesos. This was designated as *infalsificable* money, and was issued with a nominal value of 20 centavos Mexican National gold or about 10 cents in U. S. currency. This ratio was maintained for only about three weeks, and soon fell to as low as 2 $\frac{1}{4}$ cents in the purchase of foreign exchange, and became practically worthless for the purpose of domestic purchases. This paper was made legal tender and so was required to be accepted in payment of debts. Those refusing to accept it were subject to heavy fines in gold and silver or to imprisonment. In fact the whole board of directors and the managers of one bank were kept in the penitentiary for five days for so refusing.

The banks in which claimant was a shareholder were undoubtedly subjected to serious losses by reason of having to accept considerable quantities of depreciated currency. However we are left to conjecture on this point since there is no evidence in the record to indicate the extent of any such losses. Nevertheless it is a matter of general and common knowledge that currency began to depreciate throughout Mexico soon after the fall of Madero.

Certain phases of losses resulting from depreciated currencies are treated in the claim of Scott & Bowne, General Docket No. 2378, Decision No. 1, and in the claim of Jalapa Railroad & Power Company, General Docket No. 1876, Decision No. 2 of this Commission. In the Scott & Bowne Decision No. 1 the following language is used:

"It is elementary law that states are not responsible for losses caused by currency fluctuations."

While no specific claim is made for losses suffered by the four banks of which claimant was a shareholder, based on the forced acceptance of depreciated currencies, there can be little doubt, in view of the disturbed conditions prevailing in Mexico prior to the Carranza decree of September 15, 1916, that these banks suffered heavily from such causes, and that the value of claimant's shares had shrunk in proportion to said losses. The Mexican Government cannot be held liable under international law for this shrinkage.

We call attention to this question at this point for the reason

that all said banks except the Banco de Durango were still in operation under the management and direction of their own boards of directors prior to the decree of September 15, 1916, above mentioned. By this decree the Carranza government took over the banks, appropriated their metallic reserves, and proclaimed a moratorium.

This decree of Carranza and the forced loans levied by Huerta in 1913 and 1914 are the bases of the present claim.

There is evidence in the record that Banco de Durango suspended operations with the public on June 18, 1913, and that for a time thereafter it was in liquidation in the hands of its Directors. The whole record as to this bank contains very meager and unsatisfactory evidence. There is some evidence however that its losses exceeded its entire capital—but in determining the value of its shares at the date of the acts on which this claim is based it must be kept in mind that it had already ceased active operations as a going concern.

The Memorandum of Claim, the Memorial, and the American Brief each places the loss at a different amount. The claim as set forth in the Brief is for the sum of \$64,303.60. This amount was determined by taking the pro rata part of the total losses suffered by the banks on account of the forced loans and the seizure of metallic reserves to which claimant would have been entitled on the basis of the number of shares owned by him, and adding thereto interest at 6 per cent per annum to the end of the year 1935 which was the approximate date of the filing of the Brief. Interest is claimed as compensation for dividends which claimant would have received if the banks had been permitted to continue active operations.

This is the basis for calculating the loss of claimant which is insisted upon in his Petition for Review.

It is proper to note here the efforts made by later administrations of the Mexican Government to bring about the rehabilitation of the banks and to compensate them for the metallic reserves which had been seized by the Carranza Government under the Decree of September 15, 1916. The forced loans of Huerta were repudiated by all succeeding administrations.

General Obregon became President in 1920, and by Decree of January 31, 1921, prescribed conditions for the return of the banks to their owners. The details of this Decree are set out in the opinion of Commissioner Underwood at pages 13-16 of the Scott & Bowne claim.

Certain contracts were made between the Boards of Liquidation and the Government in efforts to fix the obligations of the Government to the various banks, but these contracts failed to re-establish the banks as active institutions.

The next law of general effect was that of August 30, 1930. By Article 10 of this law the Government assumed the obligations of the banks "consisting of bank notes and provisional certificates that said institutions may have issued, or will issue, until February 28, 1931, in accordance with the Decree of January 31, 1921" (Mem. Annex 13, p. 255).

This assumption of obligations which had priority over the rights of the shareholders was of considerable benefit to such owners, since, theoretically at least, the banks had bills and certificates outstanding equal to twice the amount of the metallic reserves which had been expropriated under the Carranza Decree of September 15, 1916.

Subsequent to the Decree of August 30, 1930, other contracts were entered into between the Government and the Liquidating Agents of the banks.

In his appraisal of this claim Commissioner Underwood referred to the statement of facts contained in his appraisal of the claim of Scott & Bowne, hereinabove referred to, and which was a clear history of the dealings of the various Mexican administrations with the banks of issue in Mexico.

The opinion of Mr. Underwood concerning the losses of this claimant and the other shareholders of the Mexican banks is clear and concise and we quote in full what he has to say as to these losses generally:

"When we come to the stockholders we are dealing with that group which is last in line of preference, so far as the metallic reserves and assets of the banks are concerned; but still these claimants have their rights. First, they were affected when Huerta imposed his forced loans. Later in 1916 the whole banking structure was virtually destroyed when Carranza seized the bullion; and, although the stockholders were third in line of preference, their shares suffered great losses in value through the same strokes which impaired the values of the bills and deposits. However, the difficulty we have is in computing the losses. The American Agent does not in all cases show what the claimants paid for their shares, and in no case what their market value was from time to time. He claims par as the loss unless there were distributions by liquidators, and then uses par as the base. However, he does show the dividends which were paid by the banks in 1912 and prior years, and he gives a very considerable quantity of data with reference to the condition of the banks either in liquidation or at the times when they were being dealt with by the Government with respect to its obligations to them. It is of course true that the shareholders of the banks would have suffered the depreciation in value of their shares consequent to the revolution and troubled times even if the Government had not taken their funds; so we may not properly make any allowance for that loss in value which resulted from generally disturbed conditions, but must confine ourselves to the loss in value which seems reasonably to have resulted from the forced loans and from the seizure of the bullion by the Government itself. It is difficult to measure this loss and yet there was a loss issuing from those events, so I am forced to make an estimate of the loss in individual cases, judging the same as reasonably as possible from the information given concerning the condition of the banks, as far as the same is

shown, and from the dividends which they were accustomed to pay."

His estimate of the losses of the present claimant were as follows:

- 25 pesos per share on the 50 shares of Banco de Durango;
- 40 pesos per share on the 744 shares of Banco de Jalisco;
- 45 pesos per share on the 100 shares of Banco del Estado de Mexico;
- 50 pesos per share on the 25 shares of Banco de Tamaulipas.

Converted into U. S. currency the total appraisal amounts to \$18,880.00 with interest from September 15, 1916.

In his Petition for Review the first contention is that Commissioner Underwood does not meet the minimum requirements with respect to findings of fact and statements of reasons for his conclusions.

We are of the opinion that the reference to the facts as set out in his opinion on the Scott & Bowne claim is entirely sufficient to meet this objection.

In his Petition for Review claimant urges that Commissioner Underwood erred in considering the claim as one for the impairment of the value of his shares and not as a claim for his proportionate parts of the losses and damages suffered by the banks, and insists that his claim should have been allowed as presented in the American Brief.

We are unable to agree with this contention. The stockholder in a bank has no legal interest in its assets until all its bills and notes of issue have been retired, all its depositors paid, and all its obligations of whatever nature fully liquidated. He then becomes entitled to his proportionate part of the remaining assets.

In his appraisal Mr. Underwood undertook to determine the depreciation of the value of the shares belonging to claimant which should be attributed to wrongful acts by the Mexican Government. Naturally he had also to consider the effect of various other forces and conditions affecting the business of the banks and the weight which these might have on such depreciation. Mexico cannot be held liable for the depressive results of these general conditions.

Both the basis of the appraisal and the amount thereof appear to be fair and equitable in view of the record before Commissioner Underwood.

Claimant complains that Commissioner Underwood failed to make allowance for losses of the banks resulting from the forced loans to Huerta.

Referring to the quotation from the appraisal given above we find this element of losses specifically mentioned as the act of a de facto government for which Mexico is responsible.

As for losses resulting from cancellation of charters and concessions as banks of issue, and the consequent loss of dividends to claimant, and his contention that the appraisal should have made an allowance to cover such prospective dividends, or that the principal sum of the appraisal should have included an allowance of interest on the original losses in lieu of prospective dividends,

it appears that he is thus asserting claims for losses that are prospective, speculative, conjectural and too remote to form the basis of an award under international law.

"Speculative, conjectural, and remote damages have uniformly been disallowed by Claims Commissions." (Borchard 416, with numerous citations under Note 2.)

When we take into consideration, as we must, the long period of general unrest, revolution, and civil war, resulting in frequent changes of administrations during the years between 1910 and 1920, most of such changes brought about by armed violence and assassination, we are unable to support the theory of claimant that he would have continued to receive dividends had it not been for the specific acts of the Government which form the basis of his claim.

We are unable to see any reasonable degree of certainty that the banks would have continued to earn and pay dividends under such conditions over a period of 18 or 20 years. Nor can we see that the failure of claimant to receive such dividends for all these years can be charged as a direct result of the governmental acts of which complaint is made. To so hold would be venturing into the realm of mere possibility, presumption and speculation. Such speculative losses are entirely too remote to form the basis of an award.

This question was thoroughly argued before the Geneva Tribunal in the Alabama Arbitration and was given careful consideration.

The holding of the Tribunal was that "prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies."

This has been regarded as a reliable precedent by subsequent tribunals which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similar consequential elements of loss (Borchard, pp. 413-414).

A careful consideration of the record and of the contentions advanced in the Petition for Review constrain us to the view that there is no showing of error in the appraisal resulting in a manifest injustice to claimant.

The petition for review is denied and an award will be entered on the basis of the appraisal.

DECISION No. 35-B

General Docket No. 667. Claimant: Ruby Gold and Copper Company. Amount claimed: \$1,000,000.00. Award: disallowed.

On Petition for Review:

This claim, in the sum of \$1,000,000, is for property losses alleged to have resulted from raids by Yaqui Indians. Mexico's responsibility is predicated upon its alleged failure to prevent, or to furnish protection against, such raids.

Claimant, an Arizona corporation, is the owner of all except four of the 10,000 shares of a Mexican corporation of the same name. There is an allotment to claimant. The Mexican corpora-

tion held legal title to a number of mining claims located in a remote and isolated district in the State of Sonora which had been inhabited by the Yaqui Indians since the time of the Spanish Conquest of Mexico.

The original complaint concerning the losses on which this claim is based was filed with the Department of State on August 9, 1907. It formulated a claim of \$25,000.00 for the expense of maintaining a private guard for the properties prior to their abandonment, and for \$300,000.00 for estimated profits which would have been realized from operation of the mines and smelter from the date of forced abandonment in June 1905 to August 9, 1907. These estimated profits are based on an alleged earning capacity of \$400.00 per day. This complaint alleged that claimant had been informed by hearsay and report that its property had been damaged or destroyed by Yaqui raids and reserved the right to increase the amount claimed whenever the extent of damages could be ascertained.

Memorandum of Claim was filed with the General Claims Commission, United States and Mexico, on August 21, 1925, for the sum of \$325,000.00 as indemnity for failure to give protection during Yaqui Indian trouble.

The Memorial, filed April 28, 1927, makes the following allegations. Development of the mining properties began about July, 1902, and \$150,000.00 was expended in erecting a smelter, storehouses, offices, magazines and quarters for a large number of laborers who were employed in and about the mines, and in sinking shafts and other development work in the mines. The enterprise had reached its initial stages of productivity in the spring of 1905, and an experimental run of the smelter had demonstrated a net earning capacity of \$400.00 per day. In June, 1905, the Yaqui Indians began a series of raids on the property resulting in heavy damage. Two raids took place during the middle of the year 1905. That part of the plant which was not carried away during the first raid was totally destroyed during the second. The plant was left in a wholly demolished condition so that it was impossible to continue operations with the damaged machinery remaining on the premises. The raids of the Indians were so terrifying that it was impossible to retain help for the purpose of reorganizing and rehabilitating the plant, and the protection furnished by the Mexican Government was not adequately provided and not permitted to remain on the premises for any length of time. The claimant endeavored at great expense to defend itself, and appeals for protection were repeatedly made to both civil and military authorities. One promise was made by the military commander that earnest efforts would be made to end Yaqui raids upon mining camps in that vicinity. A military guard of 15 men was stationed on the premises for a time, but this guard was removed and the depredations of the Yaquis resumed with greater frequency and violence.

The Memorial asks for an award of \$1,000,000.00 as compensation for the loss, not only of its original plant and investment,

but also for the loss of the profits which it would have realized if claimant had been permitted to operate the plant.

In its material parts, the Mexican Answer denies that it is proved that the Yaqui Indians committed the depredations alleged or that Mexico is responsible under international law even if such raids did occur. It also denies all the allegations which tend to show claimant suffered damages for which it is entitled to compensation by Mexico, and maintains that the evidence fails to prove the facts alleged in the Memorial.

Commissioner Underwood held that there is no proof of neglect of Mexican authorities to furnish protection and to apprehend and punish the persons guilty of despoiling the property; that it is not established that the depredations were committed by any certain individuals, or even by Yaqui Indians; that claimant assumed certain risks incident to operations in the heart of the Yaqui country of which it must have had knowledge before beginning such operations; that a government is not an insurer of the lives and property of persons domiciled within its jurisdiction; and that the claim must fail.

In its petition for review claimant contends that Commissioner Underwood was in error on four different grounds:

1. In grounding his disallowance on the existence of a revolution or rebellion which was beyond the power of the Mexican Government to control or suppress.
2. In concluding that the claimant had assumed a risk in undertaking mining operations in Sonora.
3. In his conception of Mexico's duty in the matter of the protection of claimant's property.
4. In disallowing the claim in view of the established facts and the applicable principles of law.

We thus have before us the issue of responsibility of Mexico for acts of Yaqui Indians; the question of assumed risk; and the extent of the duty of Mexico as the guarantor or insurer of the safety of claimant's property. It is our opinion, however, that the proper disposition of this claim does not depend on a decision of any of these questions.

Point 4 of the petition for review alleges the appraisal was in error in disallowing the claim in view of the established facts and the applicable principles of law.

The fatal weakness of the claim lies in the lack of evidence to establish when or by whom the property of claimant was damaged or destroyed. Even the allegations in the Memorial are indefinite, meager, and deal in generalities. For instance, paragraph V alleges that:

"During the month of June, 1905, the Yaqui Indians commenced a series of raids on the property of the claimant resulting in heavy damage."

As will be hereinafter shown in analysis of the evidence submitted in the record, the smelter was being operated for several days in the latter part of June, 1905, and a report by the man in charge of these operations, Superintendent Tye, made to officers of the claimant more than two months later, August 29,

1905, makes no mention of any attack on the property or of any damage up to the date of the report. This communication was transmitted to stockholders with a report of the company's secretary dated September, 1905.

The same paragraph of the Memorial alleges:

"Two raids resulting in particular damage took place during the middle of the year 1905. That part of the plant which was not carried away during the first raid was totally destroyed during the second and the plant left in a wholly demolished condition."

The report of September, 1905, above mentioned, wholly fails to substantiate any such allegation.

In addition to the above discrepancies between the allegations and the evidence there are other serious defects and contradictions in the record. Some of these are pointed out below.

Annex 19, affidavit of Floyd B. Wilson, dated December 6, 1926, refers to the above-mentioned petition of August 9, 1907, as setting forth losses of the claimant suffered by having "its property on the surface demolished and burnt, shafts filled or dynamited and flooded, in short destroyed completely" by Yaqui Indians.

This affidavit of Wilson, who was president of the claimant corporation, says the petition to the Department of State above mentioned sets forth the actual losses up to date it was filed (August 9, 1907). This petition states the loss of the claimant as \$300,000 which it is claimed it would have earned had it not been compelled to shut down, during the period from June, 1905, to the date of the petition, approximately 750 days. In computing the loss at the above sum claimant says these damages have been established by the run of the smelter during the months of *April, May, and June, 1905*; that this run "proved conclusively that the machinery and equipment and the development of the mine had reached a paying stage, showing to the Company a net profit of at least \$400 a day."

It must be noticed however that the time during which the smelter is alleged to have been in operation, as stated in the preceding paragraph, is not sustained by other evidence in the record, as the above-mentioned report of Superintendent Tye states that the furnace was fired on June 12th, gradually heated until 15th, and, after trouble encountered on 16th, was ready to test possibilities on 19th. Smelting was continued until 26th, when matte was tapped as low as possible.

It thus appears that the smelter was in actual operation only seven days. It seems a very short period in which to establish or determine with any degree of certainty an earning capacity of \$400 per day which claimant seeks to have applied as the measure of damages over a period of several years.

Another discrepancy in the record is disclosed by the statement of claimant on page 1, Annex 18, that this was "the first run made by the Company" while at page 5 of Annex 22-A we find a report of the Mining Engineer Claggett at El Batamote, dated March 12, 1904, saying "Your reverberatory smelter has now been in operation for several days," etc. This operation is also

referred to by George W. Crowe, on page 7 of this same Annex, in which he says the operation was unsuccessful financially but was of value in other respects. He states that the furnace was fired on the 3rd of March, was hot enough to begin feeding ore on the 5th, and the feeding of ore was increased until they were treating at the rate of 24 tons per day. "This only lasted a short time, when the bottom of the furnace showed accumulations, due to lack of matte." This statement of Crowe is dated March 14, 1904.

It thus appears this test of the smelter covered a period of no more than seven or eight days.

The furnace was completed about the end of November, 1903. Annex 22-B. We have evidence of only two runs by the smelter, one in March, 1904 and the other in June, 1905. Each run was for only about seven days, or a total running time of fourteen days during the nineteen months following the completion of the furnace. The first run is acknowledged to have been unsuccessful, and we are furnished with no convincing evidence that the one in June, 1905 produced anything of value.

The major portion of the amount claimed is for the loss of prospective profits which would have been earned at the rate of \$400.00 per day, provided only that Mexico had furnished protection against the Indian raids. There is certainly no proof to establish such an earning capacity. Even if such rate of earnings were proved the prospective profits based upon the presumption that the mines and smelter would continue to produce at a like rate, or at any rate, for any period of time in the future, are entirely too remote, contingent and uncertain to form the basis of an award.

The only other item of alleged loss is for destruction of the physical properties of claimant.

Certain machinery and equipment was shipped and delivered to Ruby Gold and Copper Company at Ortiz, Sonora, during the period between December 17, 1902, and January 16, 1904, for which the company paid \$20,938.27. Annex 15. We may presume that this equipment was transported to the mines of claimant and used in the construction of its plant. We are furnished with no direct evidence as to the cost of any other portion of the plant, although claimant alleges a total expenditure of \$150,000.00 (Mem., par. IV).

This is the property which the Indians are said to have destroyed, and, while no separate item of claim is presented for this destruction it must be considered as entering into the total of \$1,000,000.00

The measure of damages for the destruction of such physical property as claimant may have had, conceding that it was destroyed, would be the value of the property at the time and place that the destruction occurred. But since there is no convincing evidence that the smelter was ever successfully operated, and since it appears that it was abandoned by claimant after the test run of June, 1905, and that none of its responsible officers, directors or employees ever again visited or even attempted to visit

the plant from that date until October, 1920, it is not unreasonable to conclude that the plant might have been unsuitable for the purpose for which it was intended, or that the ore which it had been designed to treat might have proved to be of unprofitable quality. In either case the machinery, houses and equipment, located as they were in the wilds of Sonora, would have very little value, if any whatever. Furthermore, there is no definite evidence to prove when or by whom it was damaged or destroyed. The entire record is full of uncertainties, discrepancies and contradictions. The allegations of the Memorial and most of the evidence are based on hearsay and presumption. A large portion of the so-called evidence consists of copies of reports to stockholders, many of whom resided in England, based on reports made to the officers of the company by employees at the mines. These reports do not constitute convincing proof of any facts which would prove liability on the part of the Mexican Government.

There is no positive evidence that the properties of claimants had been subjected to the alleged damages and destruction. The officers of the claimant were not sure in their own minds when the petition was presented to the Department of State in 1907 whether their property had been attacked, or to what extent it had been damaged. There is no convincing evidence that anyone connected with the company ever visited the mines after June, 1905 until October, 1920 (Annex 20). Neither could they have been certain whether the Yaqui Indians were responsible for the acts of which they complain, even if the properties of the mine had in fact been damaged or destroyed.

We therefore have no evidence on which to base an award for damage or destruction of physical property.

There are numerous other instances of contradictions and discrepancies in the record before us, but those cited above are sufficient to convince us that the claimant failed to make a showing entitling it to an award and that the petition for review has failed to establish its contention that the appraisal results in a manifest injustice to claimant.

The petition for review is therefore denied and an award will be entered on the basis of the appraisal.

DECISION No. 26-B

General Docket No. 696. Claimants: J. J. Heim and W. S. Woods. Amount claimed: \$147,760.00. Award: disallowed.

On Petition for Review:

This is a claim to be indemnified in the sum of \$147,760 for losses alleged to have been caused by the wrongful interference of local officials with the employment of laborers and by failure to afford protection to claimants who had a large coffee plantation in the State of Vera Cruz, Mexico.

In 1910 and 1911 claimants engaged the necessary laborers in the neighboring State of Oaxaca. It is alleged that local officials prevented the laborers from coming to the plantation, and that as a result they were unable to harvest their crops.

The evidence consisting of various affidavits filed in support of the claim tended to establish that rebels were operating in the vicinity during the above-mentioned period and the years in question, that the Government of Mexico did not have sufficient forces to cope with them successfully and that local officials endeavored to keep the people in the towns and were unable or unwilling to punish those who were disturbing the peace on the plantations.

Commissioner Underwood appraised the claim and in his conclusion stated:

"To succeed in a claim based upon lack of protection it is necessary in any event to show that the government had the means of giving protection but refused, or failed in a culpable way, to do so. There is no showing in this record that the Government had the means to restrain the acts complained of. It is incumbent upon the claimant Government to make that showing, for certainly when as a matter of history it is known that large portions of the Republic were in utter disorder during 1910 and 1911, the burden of showing its incapacity in that particular district can not wholly be thrown upon the respondent Government. Some sort of a reasonable showing should have been made by the claimant Government. I think the claim is without merit."

The foregoing statement of the law finds support in Borchard's work, "The Diplomatic Protection of Citizens Abroad," wherein he states at page 215:

"The general rule that in the absence of governmental complicity . . . the government is not responsible for the wrongful acts of private individuals which it could not prevent, has been reiterated on numerous occasions by international tribunals and by the Department of State." See cases cited in footnote.

The petition for review urges that the burden on the claimant Government was limited to showing that there was a lack of protection and resulting damage, and that Commissioner Underwood erred in holding that the burden of showing the inability or incapacity of the respondent Government to give protection was on the claimant Government.

This argument seems to us to be without weight. International responsibility is not predicated alone on lack of protection and resulting damage. The failure to protect must be shown by claimant to have been wrongful. This is ordinarily accomplished by showing that the respondent government had the means at its disposal and neglected to use them or that, in the exercise of due and reasonable diligence, it could have had sufficient means at its disposal.

The claimant Government had the burden of proving that the failure to protect was wrongful as hereinbefore indicated. This element of wrongfulness is one of the requisites essential to establishing a *prima facie* case, before there could be a shifting of the burden. Ralston in "Law and Procedure of International Tribunals" says at page 220 that:

"Undoubtedly the burden of proof falls upon the claimants before commissions as in other cases, except in so far as such burden may be removed by the provisions of the protocol. The claimant's case once made out, the burden is transferred to the defendant. . . ."

To the same effect see Sandifer "Evidence before International Tribunals," Section 29.

The evidence adduced by the claimants tended to negative the suggestion of international responsibility, rather than support the case.

There is no showing of error resulting in manifest injustice.

Accordingly, the petition is denied and an award will be made on the basis of the appraisal heretofore made herein.

DECISION No. 31-B

General Docket No. 731. Claimant: The Texas Company. Amount claimed: \$47,467.96. Award: disallowed.

On Petition for Review:

This is a claim for refund of \$47,467.96 alleged to be excessive payments of taxes illegally imposed on shipments of liquid asphalt.

A number of shipments of petroleum products classified by Mexican authorities as liquid asphalt was made during the months of August, September, October, and November, 1922 (Mem., pp. 578, 579). Export taxes were assessed on the basis of this classification. Subsequently and as the result of tests made and the interpretation of the tax decrees, the exporting company, the claimant's predecessor in interest, was compelled to pay back assessments on these products on the basis that the shipments came within a different classification than liquid asphalt. The amount of the additional tax was paid under protest.

The interpretation of the decrees and the tests made by chemists for the Mexican government classified these shipments as fuel, while, according to the interpretation by the exporting products company and the tests made by its chemists, the products were liquid asphalt, which called for a lower export tax rate. The contention of Mexican authorities was challenged in the Mexican courts, and a judgment was rendered against the exporting company in 1924, which finding was appealed by it to the Supreme Court of Justice. The decision of that court, rendered in 1936, was against the appellant. The claim was filed in 1925 with the General Claims Commission while such appeal was pending.

In finding that no award should be made, Commissioner Underwood held that the General Claims Commission, when the claim had been filed, was not concerned with the future progress of the suit in the Mexican courts, unless the final decision had rectified a wrong; that he could not find contrary to the judgment of the Mexican authorities unless there was shown "a patent unfairness in the proceedings, a breach of duty consciously committed, or such a reckless or careless disregard of official obligation as to amount to the same thing"; and that the record contained no such delinquency. To these conclusions of the Commissioner the claimant excepts and the matter is before this Commission on a petition for review.

An international tribunal, if it should finally determine that it has jurisdiction over a claim, takes that jurisdiction from the time the claim is filed and on the basis of the record at that time and need not ordinarily concern itself with the decision of a municipal court made subsequent to the filing of the claim. It should of course take cognizance of that decision when it rectifies the wrong alleged in the claim, for under such circumstances there is no longer a necessity to reach a decision in the claim before it. In this claim, the proceedings in the appellate court are considered only in so far as they point out the facts and contentions of the parties to the claim. Such proceedings are considered here as evidence. The alleged delay in reaching a decision in the Supreme Court of Mexico was not, of course, the proximate cause of the alleged loss on which this claim is based.

The claimant alleges that the Mexican authorities did not interpret the law properly, that the tests made by the company to determine certain facts concerning the shipments were correct, and that the tests made by the Mexican authorities were erroneous. The burden of proof is on the claimant, and it must show that all these matters were determined by the Mexican authorities and courts in such a way as to be discriminatory, confiscatory, or unmistakably unfair, or that such decisions were made in such a careless disregard of official duty as to amount to the same thing. This it has not done.

It seems clear from the evidence that the results of chemical tests made to determine the nature of the substance shipped may have varied according to the methods used in such tests. The claimant contends that the proper method is that which was used by the company chemists, but it does not prove that the methods used by the Mexican authorities justify a claim on any of the grounds just mentioned.

It is further urged that Mexico has not proven that the samples tested were actually samples taken from the shipments in question. Presumably the samples were properly taken and tested. The burden is on the claimant to show otherwise and this it has not done.

The petitioner has failed to make a clear *prima facie* showing of error that worked a manifest injustice.

The petition for review is denied and an award will be entered on the basis of the appraisal.

DECISION No. 32-B

General Docket No. 732. Claimant: The Texas Company. Amount claimed: \$720,290.32. Award: disallowed.

On Petition for Review:

This is a claim for recovery of what is alleged to be excessive and illegally exacted taxes on the production of crude and fuel oils for export which were paid under special stamp tax decrees and under the so-called "infalsificable" decree of March 29, 1917. It is contended that the interpretation or application of these decrees was erroneous from January 1, 1919 through June 30, 1921, the misapplication affecting only fuel oil during 1919, and

both fuel oil and crude oil for the remaining period. The amount claimed as excess taxes is the difference between what was actually collected and the amount claimant contends was proper under a correct interpretation of the decrees. This amount was originally alleged to be \$1,072,208.56 (Mem., p. 21). It was later reduced to \$720,290.32 (U. S. Brief, p. 63).

Commissioner Underwood held, in substance, that no award should be made because it was not sufficient to prove that the interpretation of the Mexican decrees was erroneous, but that it must be established that there was a palpable injustice in the administration of the law, which was not so shown. To this appraisal the claimant takes exception and has filed a petition for review, together with legal contentions, which brings the claim before this Commission.

It is contended that Mexico filed certain exhibits as annexes to its brief instead of with its answer. These exhibits pertained to the alleged waiver or withdrawal of an amparo suit in the Mexican courts by the Claimant's predecessor in interest. The filing of the exhibits by Mexico as annexes to its brief instead of with its answer should not have been permitted as it did not conform to the rules as promulgated by the General Claims Commission. However, the alleged action regarding the amparo suit did not, in this instance at least, bar the filing of the claim before that Commission. The Convention of September 8, 1923 provided that no claims should be rejected because the claimant had not exhausted local remedies.

The contention is made that the decision of the Supreme Court of Justice in the amparo proceedings was delayed and that as a result claimant was damaged. It is obvious that the alleged delay in rendering the decision was not the proximate cause of the alleged illegal exaction of taxes. The most that can be contended is that the decision should have been in favor of the claimant. But it is not alleged that there was any discrimination between national and foreign interests. While in a case of this type an international tribunal has a right, under certain circumstances, to set aside, in effect, the decisions of local authorities in a matter relating to taxation, the claimant must prove that the decrees, or the interpretation thereof, are either confiscatory or discriminatory, or that there was manifest unfairness in that interpretation. Conceivably, there may be such a flagrant disregard of official obligation as to amount to the same thing. None of these factors has been established in this claim.

It is further contended by the claimant that since the additional tax imposed by the so-called "infalsificable" decree was calculated by the amount collected by the misapplication of the other decrees, such tax was proportionately excessive and illegal. The decree imposing it provided that it could be paid in gold or in "infalsificable" currency. In the beginning this currency was worth but little, but the demand for it to pay taxes tended to make its value increase. Mexico could have made that tax payable in gold alone instead of offering an alternative. No doubt the decree was designed to cause an appreciation in the value of this currency

and did so. Mexico clearly had the right to make this currency legal tender for a limited purpose or for all purposes. The fact that the tax was payable in "infalsificable" currency so that when first assessed it made the tax less onerous does not change the fact that the nation had the right to enact such a measure.

The petitioner has not made a prima facie showing of error resulting in a manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 43-B

General Docket No. 789. Claimant: Patrick McCluskey. Amount claimed: \$300.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

The original claimant was born in 1816 in Donegal, Ireland. There is no evidence, however, that he became a naturalized citizen of the United States.

The petition for review must therefore be denied for failure to establish nationality.

DECISION No. 45-B

General Docket No. 1439. Claimant: Manuel T. Garcia. Amount claimed: \$475.00. Amount awarded: \$6.00.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

There is evidence of the American nationality of the original claimant in this case but it appears that he died prior to the filing of the Memorial, leaving surviving two children. There is, however, no proof of nationality of said children.

The petition for review must therefore be denied for failure to establish American citizenship.

DECISION No. 61-B

General Docket No. 1462. Claimant: Martin Kelly. Amount claimed: \$18,530.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

The evidence does not meet the requirements as to proof which are set forth on page 20 of the Commission's General Memorandum Opinion on Texas Cattle Claims. Claimant Martin Kelly alleged that he carried on the business of stock raising on his ranch from 1856 to 1873. However, in an affidavit made by him on March 18, 1873, in support of the claim of one Tyrey Mussett he stated that he left the frontier in 1861 and did not return until 1871. It is not shown what disposition was made of his cattle during his ten years' absence. The proof is insufficient to establish that the loss of claimant's livestock was the proximate result of a raid or raids from Mexico. There is no proof as to raids on claimant's ranch or livestock. Neither is there proof that his

cattle or their hides were seen in Mexico or that his cattle were driven toward or into Mexico. Accordingly, the petition for review must be denied.

DECISION No. 46-B

General Docket No. 1504. Claimant: Mary T. Tucker. Amount claimed: \$57,130.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

The record in this case contains no evidence of the American citizenship of the original claimant or of any of her successors in interest, nor is there any evidence of the loss of livestock by the claimant as a proximate result of raids from Mexico.

The petition for review must be denied.

DECISION No. 54-B

General Docket No. 1521. Claimant: David M. Poor. Amount claimed: \$9,830.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

The evidence in this case shows that the original claimants sold all of their cattle in the year 1867 and that all of their losses occurred prior to that time. Since no portion of the year 1867 is within the period of the jurisdiction of this Commission, the petition for review must be denied.

DECISION No. 107-B

General Docket No. 1528. Claimant: Jacob Bendele. Amount claimed: \$10,520.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

There is some evidence as to the nationality of the original claimant, Jacob Bendele, but there is no satisfactory evidence as to the nationality of any of his descendants.

Accordingly, the petition for review must be denied.

DECISION No. 67-B

General Docket No. 1600. Claimant: Benjamin G. Andrews. Amount claimed: \$80.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

All of the losses alleged by the claimant occurred prior to the beginning of the period of the jurisdiction of this Commission except for the alleged loss of two horses in 1870. There is no evidence to establish that the loss of these two horses was the proximate result of raids from Mexico. Accordingly, the petition for review must be denied.

DECISION No. 51-B

General Docket No. 1724. Claimant: Ransom E. Huff. Amount claimed: \$10,650.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

There is no evidence of the American citizenship of any of the descendants of the original claimant. Therefore, the petition for review must be denied.

DECISION No. 106-B

General Docket No. 1755. Claimant: August Weber. Amount claimed: \$5,660.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

There is some evidence as to the nationality of the original claimant, August Weber, but there is no satisfactory evidence as to the nationality of any of his descendants. Furthermore, the evidence does not establish that the original claimant lost any cattle as a proximate result of raids from Mexico.

Accordingly, the petition for review must be denied.

DECISION No. 102-B

General Docket No. 1779. Claimant: Joshua J. Wishert. Amount claimed: \$3,300.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

The evidence in the record in this claim is insufficient to establish that claimant lost any substantial number of cattle. On the contrary, the original claimant's own evidence would indicate that his herd increased more rapidly than the average Texas herd during the period under consideration and did not suffer any losses whatsoever. Even if it were conceded that the claimant had suffered some losses, the evidence in the record is insufficient to establish that any of such losses were the proximate result of raids from Mexico. Therefore, the petition for review must be denied.

DECISION No. 2-B

General Docket No. 1876. Claimant: Jalapa Railroad and Power Company. Amount claimed: \$6,950.80. Amount awarded: \$1,825.60.

On Petition for Review:

This is a claim for \$6,950.80 based upon the alleged refusal of an official of the Comision Monetaria to accept for redemption 139.016 pesos in Mexican currency of the revolutionary period.

In appraising the claim Commissioner Underwood found that tender had been made the Comision Monetaria and improperly refused as to 36,512 pesos. Accordingly he allowed as meritorious an item of 36,512 pesos or \$1,825.60. As to the balance of 102,504 pesos, he found that tender was not made as required by the Mexican law and accordingly concluded that the balance of the claim should be disallowed.

Claimant has petitioned for review on the ground that formal tender of the 102,504 pesos was excused by the refusal of the Mexican agent in charge to receive the same if tendered, citing American judicial decisions for the proposition that tender is waived when it becomes reasonably certain that it will be refused.

We find it unnecessary to pass upon the sufficiency of the alleged tender under Mexican law. Even if it were found that formal tender should have been excused, the evidence would not warrant reversal of Commissioner Underwood's conclusion. It is to be noted that the claim is supported only by the several affidavits of claimant's manager, William K. Boone; that there are apparent discrepancies, insufficiently explained, between Boone's contemporary affidavit of February 8, 1917, and his later affidavits of May 15, 1936, and May 16, 1936, respectively; that his contemporary affidavit of February 8, 1917, makes no mention of the additional 102,504 pesos which Boone was allegedly prepared to tender; that the claim with respect to the item of 102,504 pesos was actually first advanced in Boone's affidavits executed nineteen years after the event; that it has never been shown otherwise than by Boone's unsupported assertion that the 102,504 pesos were actually in existence when the claim accrued or when the claim was filed; that Boone failed to obtain the corroborating affidavit of an available contemporary witness; and that there is substantial doubt as to the accuracy of Boone's recollection in 1936 of the events of 1917. It follows that there is no showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 1-B

General Docket No. 2378. Claimant: Scott and Bowne, Inc. Amount claimed: \$22,734.58. Amount awarded: \$19,737.43.

On Petition for Review:

This is a claim to recover the value of certain deposits in a Mexican bank which the bank was unable to repay in consequence of governmental decrees of the revolutionary period. Commissioner Underwood recognized the claim as meritorious, applied a certain Table of Equivalents which was of general effect in Mexico during the inflationary period, and appraised the claim at \$19,737.43 with interest. In his Petition for Review claimant contends that it was prejudicial error to apply the Table of Equivalents and that the claim should have been appraised at \$22,734.58 with interest. Facts essential to an understanding of the issue thus presented will be set forth at greater length in the following paragraphs.

By virtue of deposits and interest credits dated June, 1913, to February, 1915, claimant became a creditor of the Banco de Londres y Mexico in the sum of 45,990.91 pesos.

Following the overthrow of Madero in February, 1913, the Mexican peso fell to 36.00 in August, 1913, and to 24.00 in August, 1914. A forced loan imposed upon the banks by the Huerta Administration, the issuing of paper currency by the Carranza forces,

and the ebb and flow of revolution soon completed the demoralization of public credit.

The Carranza Government was recognized on October 19, 1915. By a Decree of September 15, 1916, the Carranza Government took over the banks, appropriated their metallic reserves, and proclaimed a moratorium. The Law of Payments of April 13, 1918, incorporated a table of equivalents for the conversion of the revolutionary currencies. Carranza fell in May of 1920.

Obregon assumed the presidency on December 1, 1920, and by Decree of January 31, 1921, prescribed conditions for the return of banks to their owners. Under this Decree details of which are set forth in Commissioner Underwood's Opinion, pp. 13-16, the sums due depositors were to be converted to gold values pursuant to a Table of Equivalents corresponding to the table incorporated in the earlier Law of Payments and were to be paid in instalments in so-called preferential bonds. This Table of Equivalents appears to have been a reasonably fair attempt to establish values of the depreciated currencies of 1913-16 in terms of what it was hoped might become a stabilized currency. Conversion of claimant's account pursuant to this Table is set forth in the Opinion at p. 19.

On September 23, 1921, the Banco de Londres y Mexico wrote claimant that its account had been converted pursuant to the Table of Equivalents, thereby reducing its credit from a total of 45,990.91 pesos to a total of 39,474.85 pesos, and requested claimant to forward its check for 45,990.91 pesos in payment for the provisional certificate in the amount of 39,474.85 pesos to which it was entitled under the decree of January 31, 1921. Claimant forwarded its check as requested and received a provisional certificate entitling it to so-called preferential bonds in the amount indicated.

It is of course matter of history that attempts to reestablish credit and stabilize the currency were not immediately successful. There were further moratoria. The Government was unable to make good its undertaking to the banks. In 1925 the banks made a settlement with the Government without provision for the satisfaction of the banks' obligations to depositors. Claimant has never received the bonds to which it was entitled under its provisional certificate of 1921.

The United States thereafter filed with the General Claims Commission a claim in behalf of Scott and Bowne, Inc., to recover the equivalent of 45,990.91 pesos, with interest from September 15, 1916. Recomputation subsequently reduced the claim to \$22,734.58, the equivalent of 45,605.98 pesos (Brief, pp. 16-17).

Other claims filed with the General Claims Commission and predicated upon losses alleged to have been caused by the same sequence of acts on the part of the Mexican Government were: William C. North, General Docket No. 90; Frank S. Brackett, General Docket No. 95; R. W. Turner, Jr., General Docket No. 165; Los Ailes Mining Company, General Docket No. 2669; and Joseph Muhlendorff, Administrator, General Docket No. 2765.

In the claim of R. W. Turner, Jr., *supra*, and in the instant claim, the Agent of the United States contended that claimant was

entitled to payment of the face value of his original deposit, with interest, without reduction as provided in the Table of Equivalents. The United States Brief in the instant claim (p. 10) incorporates by reference the arguments advanced in the United States Brief (pp. 6 ff.) and Counter-Brief in the Turner claim.

In the Brief filed in the Turner claim, the United States Agent noted that claimant's deposit was made in Guadalajara in November, 1913, about seven or eight months before the first arrival of the Constitutionalist armies at that city, and continued :

"It seems to be so clear as to require no proof that the people in central or southern Mexico prior to the arrival of the Constitutionalist armies did all their business in the coin or currency of the Huerta and preceding regimes, and that the paper money issued by authority of Carranza or other Constitutionalist chiefs did not enter into their business transactions in any way whatsoever." (p. 8.)

"Such reason or right as there might possibly be in the application of the Law of Payments of April 13, 1918, to some transactions, the same is wholly lacking in the matter of bank deposits made in a place prior to the arrival thereof of the Constitutionalist forces. The decree of January 31, 1921, in so far as the attempts to subject such deposits to a reduction according to the Table of Equivalents of the Law of Payments, is entirely arbitrary and is unjust and confiscatory. The deposit that was made by the claimant has no relation to the paper currency which at a later time became the circulating medium in the place where the deposit was made." (p. 9.)

"Paper currency on which the Law of Payments and its Table of Equivalents are based, was then circulating only in those parts of Mexico that were occupied or controlled by the Constitutionalist forces. The Constitutionalist forces were at war with the government which was in power at Guadalajara and Mexico City, and the Constitutionalist paper money was enemy money in those cities at the time the deposits were made and would not have been there recognized as lawful money." (p. 10.)

The argument of the United States Agent ignores the circumstance that currency depreciation throughout Mexico began soon after the fall of Madero, that Carranza's Government was recognized by the United States in October, 1915, that the Obregon Decree of January 31, 1921, was conceived to resolve a calamity national in scope, and that the latter decree provided at least plausible bases for conversion and was applicable throughout Mexico to nationals and aliens without discrimination. It is elementary law that states are not responsible for losses caused by currency fluctuations. If the Banco de Londres y Mexico had paid off claimant in inflated Carranza currency, claimant would have been without recourse except to the extent that the Government might have been prepared to redeem such currency. Compare Jalapa Railroad and Power Company, General Docket No. 1876. Actually the Decree of January 31, 1921, has had the effect of

conserving for claimant an interest which might otherwise have been wholly lost.

Having previously disposed briefly of the argument advanced by the United States Agent in his Memorandum Decision in the Turner claim (p. 2), Commissioner Underwood dismissed the identic contention in the instant claim with the following observation:

"In the decree of General Obregon of 1921 he directed that the Table of Equivalents should be employed. This gave credit for the value of any kind of money at the time it was deposited. We are not here dealing with questions of depreciated money and this Table seems fair enough. I shall use it in these cases." (p. 40.)

Commissioner Underwood appraised the instant claim at \$19,737.43, the equivalent of 39,474.85 pesos, in turn the equivalent of 45,990.91 pesos after applying the Table of Equivalents.

Claimant was notified of the above appraisal and has petitioned for review. The Petition is confined to an attack upon Commissioner Underwood's use of the Table of Equivalents. Claimant merely adopts and reiterates the argument of the United States Agent in support of the Turner claim. The claim of George W. Cook vs. The United Mexican States (Claims Commission, United States and Mexico, Opinions of Commissioners, February 4, 1926, to July 23, 1927, p. 318), to which reference is made in the Brief of the United States in the Turner claim (p. 10) and in the present claimant's Petition for Review (p. 3), is not in point and contributes nothing in support of claimant's contention.

For the reasons indicated, we conclude that claimant's Petition for Review should be denied. While denial might rest on the procedural ground that claimant has not successfully carried the burden of showing prejudicial error as required by the Commission's "Memorandum Concerning the Petition for Review," we have felt that the entire record should be scrutinized carefully at this time to determine and appraise any merit which claimant's contention might have if more adequately presented. We conclude that the contention is without merit and that no showing of error working a manifest injustice has been made.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 22-B

General Docket No. 2415. Claimant: Wells Fargo & Company. Amount claimed: \$30,715,117.40. Amount awarded: \$1,092,953.20.

On Petition for Review:

This is a claim to be indemnified for losses alleged to have been suffered in consequence of the taking over by the Mexican Government of claimant's express business conducted over Mexican railroads. For many years prior to 1908 claimant had conducted an express business in Mexico under contracts with various railroads operating in that country. In 1908 the National Railways of Mexico, a corporation controlled by the Mexican Government, was organized to take over and unify established railway lines. In 1909 claimant entered into an arrangement with National Rail-

ways whereby it was agreed that a Mexican company would be organized, that claimant would transfer to this company its various contracts with Mexican railroads and would supply 1,000,000 pesos of capital, and that this company would be given the privilege of conducting the express business over the lines of the National Railways for a period of twenty-five years, the franchise to be further defined in a contract between the Mexican company and National Railways. Thereafter the *Compania Mexicana de Express, S. A.*, was organized, its 5,000 shares of Series B stock were issued to claimant and its 5,000 shares of Series A stock were issued to National Railways, a contract was executed between *Compania Mexicana* and National Railways, and on September 1, 1909, the new company began the operation of the express business over Mexican railroads. National Railways was to receive fifty per cent of the gross earnings of the new company, a preferential dividend of nine percent of the gross earnings on its Series A stock, and fifty per cent of the net profits after payment of a like dividend on series B shares. The balance was to be divided in equal parts between Series A and Series B shareholders. In 1913 the name of the new company was changed to Wells Fargo & Company Express, S. A.

The Mexican company operated a growing and profitable express business serving nearly 9,000 miles of railroad up to 1914. It maintained more than 700 offices, employed 27 officers and 1,739 employees, conducted a messenger service over railway lines and had equipment and property of substantial value. In 1914 as the armies of the Constitutionalists proceeded southward toward Mexico City they seized the railroads and everything connected therewith. Offices, equipment, records and property of the Express were turned over to the so-called "Express Constitucionalista." Finally, by Carranza decree of December 4, 1914, the Constitutionalist Government took over the railroads and all related services. Thereafter the express business, like the railroads, was operated for the Government until January 1, 1926, when both the railways and the express business were turned back to National Railways. Neither the claimant nor the Mexican company ever recovered the express business. A contract of November 29, 1927, between claimant, the Mexican company and National Railways, rescinded the original agreement of 1909 and released National Railways from all obligations thereunder. National Railways turned over to claimant the Series A shares in the Mexican company and agreed to pay the Mexican company 2,200,000 pesos in monthly instalments. Claimant concedes that this sum was paid as agreed (Petition for Review, p. 105).

The claim was filed with both the General and the Special Claims Commissions, the General claim being predicated primarily upon an alleged loss of profits up to January 1, 1926. Adding the alleged value of certain physical property, funds and credits, and accumulating interest, it was alleged in the alternative, on the basis of certain reports of earnings published by the Mexican Government, that claimant was entitled to an award of 24,323,-176.33 pesos. The Brief reduced this figure to 23,978,867.47 pesos on the basis of evidence filed with the Mexican Answer. The Joint

Committee classified the claim as General. Commissioner Underwood concluded that the claim should be regarded as Special to December 13, 1914, and General thereafter. This resulted in the final classification as Special of a claim for \$248,571.19 and the appraisal of the balance as a General claim.

In appraising the General claim Commissioner Underwood concluded that "The measure of recovery should be, not the expected profits over the period of the franchise, but the fair and reasonable value of the property taken augmented by the existence of those elements which constitute a going concern" (Memorandum Opinion, p. 26). He estimated the "going concern" value at \$2,000,000, credited one-half of that amount to claimant on account of its interest in the Mexican company, and added claimant's proportion of the personal and real property previously determined to be a General item. The claimant's interest in the property taken was thus computed at \$1,105,453.20. Reduced by \$12,500.00 on account of a payment which Carranza made to the Mexican company in 1918-19, this computation resulted in an appraisal of \$1,092,953.20 with interest from December 4, 1914.

Commissioner Underwood was in doubt as to whether the Mexican company had received further payments on account of the taking over of its property and services and so made his appraisal subject to a recommendation that claimant be required to make a full and satisfactory explanation of all payments received. Claimant was notified of this condition under date of June 7, 1943. Claimant filed a Memorandum of explanation on November 12, 1943. Claimant's explanation has been found satisfactory by this Commission. Accordingly the appraisal stands as noted above.

The Petition for Review states (pp. 7-10) that review of the appraisal is requested, not because of exception taken to any of Commissioner Underwood's rulings of law, but because he based his appraisal on a different case from that which the United States had presented. The claim presented, says petitioner, was to recover the net profits which Mexico had received over a period of years and converted to its own use, whereas the claim appraised was for the condemnation or expropriation of an express business.

The record shows that Mexico took over the railroad express business in 1914, to the exclusion of the Mexican company, and that neither the Mexican company nor this claimant ever recovered any part of the business thereafter. See Petition for Review, pp. 142-143. It has nowhere been contended or seriously suggested that the taking was illegal. On the contrary it appears to have been authorized by Mexican law and to have been warranted in the circumstances. Thus the sole issue was with respect to Mexico's obligation to indemnify the claimant. The claimant had contended that it was entitled to have its share of the profits which the Mexican Government made from the business down to 1926. Commissioner Underwood took cognizance of this contention and rejected it. See Memorandum Opinion, pp. 8, 14, 26. In lieu of the theory of recovery for which claimant contended, Commissioner Underwood ruled in effect that claim-

ant was entitled to the value of what it had lost as of the time of the loss. The difference between his ruling and claimant's contention concerned the measure of recovery.

We are satisfied that the claim appraised was the one presented and the only question before this Commission is whether petitioner has made a *prima facie* showing of prejudicial error in Commissioner Underwood's ruling with respect to the measure of recovery. It is conceded that the Brief of the United States cited no precedents opposed to the ruling. The Petition makes reference to two cases before Mixed Arbitral Tribunals established under the Treaty of Versailles and related treaties, to something said by the Permanent Court of International Justice in the Chorzow Factory Case and to the Norwegian Ship Arbitration before the Permanent Court of Arbitration. See Petition for Review, pp. 124-135. But these precedents are clearly not controlling of the instant claim. While it may hardly be said that clear lines of authority have emerged from the accumulated precedents, it is apparent that expected profits have rarely entered into the computation of damages for the taking of a business except where the original taking was wrongful. See Case of Aaron Brooks, United States and Mexico (1868) Moore, International Arbitrations, IV, 4310; Case of R. H. May, United States and Guatemala (1900) Moore, Digest, IV, 730; Case of Irene Roberts, United States and Venezuela (1903) Ralston's Report, 142; Shufeldt Claim, United States and Guatemala (1930) Department of State, Arbitration Series No. 3. See also Borchard, Diplomatic Protection of Citizens Abroad, pp. 413 ff. We have found no authority for the much broader proposition for which petitioner contends. Nor are we convinced, as a matter of principle, that a government which takes over a business in the exercise of lawful power may be said to be unjustly enriched by any profits which it derives from such business. The obligation to compensate would appear to require no more than payment of "the fair and reasonable value of the property taken augmented by the existence of those elements which constitute a going concern." Petitioner has failed to make a *prima facie* showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 17-B

General Docket No. 2451. Claimant: The Batopilas Mining Company. Amount claimed: \$273,414.00. Award: disallowed.

On Petition for Review:

This is a claim to be indemnified in the sum of \$273,414.00 for losses alleged to have been caused by forced loans, seizure of ores, equipment and merchandise of claimant, imprisonment of its employees and suspension of mining operations in its silver mines at Batopilas, State of Chihuahua, Mexico, since 1862.

In December 1871 and January 1872 the claimant was subjected to forced loans by Diaz revolutionists. From July 29 to September 11, 1872, the mine and property of claimant were occupied by revolutionary forces under Ibarra, a subordinate officer of

Arellano and Guerra, for a period of 49 days, who extracted quantities of ore, and sold, carried off and destroyed all the merchandise and other properties of the claimant, and abused and imprisoned employees of the claimant.

The evidence in support of the claim tended to establish that revolutionists under Diaz were operating in this section of Mexico, and that the losses suffered were occasioned by acts of these revolutionary forces, and not by a bandit or bandits.

Commissioner Underwood appraised the claim and in his conclusion stated:

"From the beginning Ibarra's movement was a part of the movement of Arrelano and Guerra. They were all three operating under the same revolutionary plan as adherents of General Diaz (Mem., Annex 3, pp. 10, 31, 32, 35, 41, 43, 49, 55, 57, 58). Their movement was political in character and the requisitions, including not only the two forced loans of money but the taking over and operating of the mine commencing July 29, 1872 were made for the purpose of getting money to carry on the war for Diaz and against Juarez. The losses caused by Ibarra were derived from the acts of an unsuccessful revolutionist, and so international law does not require an indemnity."

The petition for review urges that the disallowance of the items of claim arising in December 1871 and January 1872 is due to a misconception of Mexican history of that period, and that Commissioner Underwood erred as to items of claim arising in July and September, 1872, in his classification of Ibarra as a revolutionist, and consequent failure to apply the applicable principles of law.

This contention seems to us to be without merit. The Diaz revolutionary movement was political throughout, instituted as it was against Juarez. Upon the death of Juarez on July 18, 1872, the revolution shortly thereafter came to an end, and the leaders thereof submitted to the provisional government of Sebastian Lerdo, who was elected Constitutional President of Mexico in 1872. (Martin Romero, "Mexico and the United States," at page 368; Calcott — "Liberation in Mexico," pp. 100-101.) The Amnesty of President Lerdo, dated July 27, 1872, and its acceptance, subsequently ended the revolution. The evidence also clearly established that the forcible possession and operation of claimant's mines by forces under the command of Ibarra were acts done in furtherance of the revolution headed by Porfirio Diaz. Said revolution having terminated unsuccessfully, no claim for the loss alleged may be properly asserted against the Mexican Government without at the same time showing a want of due diligence on the part of the authorities in preventing the injury or in suppressing the revolution. The burden of proof is on the claimant. (Borchard's "Diplomatic Protection of Citizens Abroad," pp. 229-233; DeCaro Case, Ralston Report, at p. 810; Sambiaggio Case, *ibid.*, at p. 666; Fenwick-International Law, at pp. 201-202.)

The evidence adduced by the claimant, so far from meeting

such burden, tends rather to negative the suggestion of international responsibility than to support the same, even were it satisfactorily shown that Ibarra was a bandit.

As to the effect of the granting of amnesty to the armed forces, this action accords fully with a recognition of the status of such forces as unsuccessful revolutionists rather than as bandits. Professor Borchard says *ibid.* at page 239:

"In several important cases, however, the granting of an amnesty to rebels has been held not to constitute an assumption of liability for their acts. This has been the case in the United States for the acts of the Confederates, and in Mexico, and on principle appears to be the better rule. As a practical matter, it is not always easy to distinguish between a movement on such a small scale as to amount to a conspiracy or plot against the established government, punishable by municipal law, and a general movement assuming the proportions of an armed contest against the government, of which international law takes notice by recognizing a status of insurgency, manifested in various ways, e.g., a warning by foreign governments to their subjects to abstain from participation. While as a matter of strict right the government may treat the insurgents as criminals, modern practice tends to regard them as belligerents, with rights as such, provided they observe the rules of legitimate warfare."

There is no showing of error resulting in manifest injustice. Accordingly, the petition is denied and an award will be made on the basis of the appraisal heretofore made herein.

DECISION No. 105-B

General Docket No. 2536. Claimant: Frederick Haas. Amount claimed: \$6,070.00. Award: disallowed.

This is one of the claims commonly known as Texas Cattle Claims and is before this Commission on a petition for review under section 4 of the Settlement of Mexican Claims Act of 1942.

This is a claim for the loss of 543 cattle and 16 horses. A claim for the same amount and the same losses was filed in the Court of Claim and that court determined that the claimant had lost property worth \$1,318 taken by Kickapoo Indians. Since the parties and the items of claim before us are the same as those before the Court of Claims, the decision of the Court of Claims is *res judicata*. The claim, therefore, must be disallowed.

DECISION No. 40-B

General Docket No. 2633. Claimant: John F. Morton. Amount claimed: \$25,000.00. Award: disallowed.

The claim is before this Commission under section 4 of the Settlement of Mexican Claims Act of 1942 on a petition for review of an appraisal made by Commissioner Oscar W. Underwood, Jr., under the General Claims Protocol between the United States and Mexico of April 24, 1934. Commissioner Underwood held that claimant was entitled to no award.

This claim grew out of the murder and robbery of four Amer-

ican citizens at or near Penescal, Texas, on May 9, 1874. The memorandum of claim designated the claimants as "Next of Kin of John F. Morton, Michael Morton, P. F. M. Coakley and Herman Tilgner" and was filed for \$200,000. In the memorial subsequently filed no reference was made to the claim for the deaths of Coakley or Tilgner and the amount prayed for was reduced to \$25,000. It was therefore properly considered by Commissioner Underwood as being claim solely for the death of the two Mortons. The present claimant is W. B. Morton, son of John F. Morton and nephew of Michael Morton.

The facts are substantially as follows: John F. Morton, 42 years of age, owned and operated a store in Texas. His brother, Michael Morton, 24 years of age, was employed in the said store. It appears that a group of Mexicans and an American referred to as an "American named Joe" came to the store and robbed the four men above named and subsequently murdered them. Presumably the store was also robbed but there is no information as to property losses although reference is made to the finding of merchandise supposedly taken from the store. It is further stated that the pockets of the murdered men were found turned inside out.

Search for the miscreants was conducted without success until a number of Mexicans were arrested and charged with the crime. It appears that five were arrested at one time and two on another occasion. All seven were taken before a magistrate on a complaint and statements were taken from them. A Texas grand jury, which presumably had the benefit of such statements, indicted thirteen men, charging them with murder. The statements obtained indicated that not more than eleven men participated in the aforesaid robbery and murders. The grand jury, however, may have had some additional information upon which the indictment of the others was founded. One of the thirteen men indicted was the above-named American referred to as the "American named Joe."

Copies of the indictments furnished in the record relate to the murder of Coakley and Tilgner. It is not shown that any indictment was found for the murder of either or both of the Mortons. The statements obtained from the Mexicans indicate, however, that all four of the men were murdered at approximately the same time.

Two of the accused Mexicans were tried, convicted and sentenced to be hanged. Presumably the mandate of the court was carried out.

It is charged that at least some of the other criminals took refuge in Mexico. The raid is said to be one growing out of general conditions of lawlessness and that Mexican authorities protected these as well as other criminals.

Commissioner Underwood in his aforesaid appraisal of the claim determined that:

"The evidence does not show that the raiders were members of the armed forces of Mexico, that any of the raiders were identified before the Mexican authorities or that any

extradition of the raiders was sought. Consequently, there is no specific proof of any negligence or delinquency on the part of the Mexican Authorities."

The petition for review challenges the correctness of said determination by Commissioner Underwood; asserts that the raid was organized in Mexico; that the armed Mexican raiders came from that country, and that

"The general facts, findings and conclusions of the Commission of December 30, 1944 in the Texas Cattle Claims and the Mexican and Indian raid claims are applicable to this claim."

It should be noted at the outset that this claim does not come within this Commission's aforesaid opinion of December 30, 1944. Said opinion did no more than to broaden somewhat the basic principles of liability applied by Commissioner Underwood in the determination of the so-called "cattle claims." Even were the terms of said opinion to be applied to claims of the nature herein involved, we must nevertheless hold that claimant has not met the requirements of liability which we there enumerated. An essential requirement is that the loss be the proximate result of a raid from Mexico. Here the raid was not made by armed forces from Mexico. It is not shown that the raid was organized in Mexico or made from that country or that the miscreants returned to Mexico. On the contrary, one of the criminals, as above stated, is shown to have been an American. Some of the Mexicans involved lived in Texas, one of them having had a home there and another having worked there for at least three weeks before the crime and thereafter returning to his work.

There were no survivors of the attack, and no eyewitnesses. The evidence aside from opinion and hearsay evidence, consists largely of statements taken from those arrested and charged with the crime. Upon the whole record we find no adequate proof that Mexico was liable for the murders forming the subject matter of this claim.

It is alleged in the affidavit of one John B. Dunn that the three Mexicans who fired the fatal shots "to the best of his (affiant's) knowledge — went to Mexico." This affidavit having been executed in 1935 and affiant's knowledge as to the foregoing facts having been predicated upon hearsay, the same seems to this Commission to lack probative force. Moreover, it is not shown that the assailants were citizens of Mexico or that they came to the United States in connection with the said raid. There is, therefore, nothing to refute the possibility that the men referred to had been in Texas before the crime. As to the statement of affiant that these men were refugees in Mexico, such statement is not inconsistent with the theory that they resided in the United States when the attack was made and that they thereafter returned to their native country. It should be remembered that at that time a large part of the population of the section of Texas was inhabited by natives of Mexico. Many had acquired American citizenship so that it may not be presumed that people having Mexican names were necessarily citizens of Mexico.

Petitioners having failed to make out a *prima facie* showing of error in Commissioner Underwood's opinion which worked a manifest injustice, the petition for review is denied.

Accordingly, an award will be entered on the basis of the appraisal heretofore made herein.

DECISION No. 6-B

General Docket No. 2679. Claimant: National Surety Company. Amount claimed: \$6,476.78. Amount awarded: \$1,295.36.

On Petition for Review:

This is a claim in the amount of \$6,476.78 with interest, the principal sum corresponding to the amount paid by claimant on March 11, 1922, in discharge of its obligation under a bond executed on September 6, 1918, in favor of Johnson and Higgins of New York, agents of the Anglo-Mexican Petroleum Company, Ltd., owner of S. S. Santa Alicia. The bond was executed to guarantee payment of all general average, salvage, or special charges which might constitute a lien upon 1,618 bales of sisal hemp shipped by Comision Reguladora del Mercado de Henequen in August 1918 via the Santa Alicia from Progreso, State of Yucatan, to New Orleans.

The Santa Alicia grounded off the coast of Campeche and was unable to resume its voyage for about twelve days. The vessel arrived at New Orleans on September 4, 1918. In order to permit the disposition of the henequen in the local market, free of lien, the Comision Reguladora procured from the claimant the bond above mentioned in the amount of \$7,760.00. Marine adjusters later determined the amount actually due on the bond to be \$6,476.78. In consideration of the execution of the bond, Comision Reguladora agreed with the Company to

"at all times indemnify and keep indemnified the Company, and hold and save it harmless from and against any and all demands, liabilities, loss, damage or expense of whatsoever kind or nature . . . which it shall at any time sustain or incur by reason, or in consequence of having executed the said bond or undertaking."

Liquidation of Comision Reguladora was ordered by authorities of the State of Yucatan sometime before marine adjusters had determined the amount due on the bond. Efforts to obtain reimbursement having been unsuccessful, claimant discharged its obligation, as noted, on March 11, 1922. Thereafter the United States filed a claim with the General Claims Commission in behalf of National Surety Company to recover \$6,476.78 with interest from March 11, 1922. A number of other claims were also filed in behalf of American creditors of Comision Reguladora. The asserted liability of Mexico in this group of claims was predicated upon allegedly improper conduct on the part of Mexican officials in connection with the management of the institution and particularly upon the action of the Federal Government in seizing certain assets with resulting prejudice to other creditors.

Records before the General Claims Commission in this and other cases involving Comision Reguladora indicate that the

institution was established primarily to serve as a buying and selling agency of the sisal hemp planters of Yucatan. It was a non-profit cooperative agency under the control of the State of Yucatan. Apparently its operations were intended to and did effect a monopoly of the local henequen industry. Upon the termination of war in 1918, henequen prices declined sharply and large stocks accumulated for which there was no ready market. This situation, together with improvident management, which appears at times to have at least bordered on wilful misconduct, resulted in inability to meet obligations and enforced liquidation. In 1919 the Government of Mexico seized vessels, office equipment, cash credits, bank deposits and other assets alleged to have had a value in excess of 8,000,000 pesos. In the result, orderly liquidation was disrupted and other creditors were left without satisfaction.

In the claim of Joseph F. Rihani, General Docket No. 272, Commissioner Underwood reviewed at length the history of *Comision Reguladora*. In his memorandum decision in *The Reguladora Cases*, William M. James, General Docket No. 1154 and others, Commissioner Underwood concluded that liability had been established and made appraisals of the instant claim and fifteen others. He said:

"Many of the things that were done were unwise, no doubt, but there is no international penalty for unwisdom. Nevertheless, the Federal seizure of assets, giving that Government a preference over the other creditors, when there was no preference in right, cannot be ignored. The problem is to make a fair separation of that part of the assets which should have been salvaged, from those which were lost through economic factors and unwisdom in administration. The Federal seizure of assets is the primary basis of liability, although I cannot forget that what remained for administration and distribution has never reached the creditors. Despite all adverse factors, it would seem that something should have been saved for them.

"At the end of 1918 there were public obligations of *Reguladora*, nearly all being bills in circulation, of something over 9,000,000 pesos, and there were owing to producers about 50,000,000 pesos, against which latter item there were about 25,500,000 pesos of loans and advances, and there were other liabilities, not capital liabilities, of about 13,500,000 pesos. The probably liquid assets totalled about 3,000,000 pesos, assets of uncertain liquidity (mostly hemp) about 35,000,000 pesos, and accounts of public interest (including the ships at 8,647,608 pesos) in the amount of 21,445,687 pesos. Roughly the credits should have been worth about 50 per cent of face value at that time. However, it is important to remember that the great debacle in sisal prices made itself manifest in the middle of 1919, when the *Comision* found itself unable to promptly honor its bills. It is not possible to make even a rough guess of values from the figures at the end of 1919, for then the sisal market was stagnant, and new items are entered which are not susceptible of even scant

analysis. Therefore, all I can do is to make an estimate of the injury caused to bill holders and other creditors by the Federal Government's appropriation of assets, and this I do at 20 per cent of face value. I adopt this figure, believing that the assets taken had a value to Reguladora much greater than their asserted value at the time.

"With regard to the question of interest, I do not think it should be allowed. The Federal Government had at least some color for its credit, and the credit may have been perfectly good, but the injury grew out of the priority which the Government forced in its own favor. This was a palpable denial of justice." (pp. 13-15.)

In appraising the instant claim, Commissioner Underwood found that National Surety Company was entitled to recover on the same basis as James and the other American creditors. Accordingly he estimated the injury caused by the Federal Government's wrongful acts at twenty percent of the true credits and allowed \$1,295.36 without interest.

Claimant was notified of the appraisal and has petitioned for review. Claimant contends that the bond executed on September 6, 1918, immediately made available to Comision Reguladora cash credits for the proceeds of the hemp and that its case is therefore different from other Reguladora cases in which claimants had been holders of negotiable bills or so-called Reguladora "tickets." It is contended that under the facts of this particular case the award should be for the full amount claimed with interest.

While pointing out factual circumstances peculiar to the instant case, claimant has made no showing of right to preference. There is nothing in the record to indicate that such a showing could be made. It is not perceived that the circumstances under which claimant became a creditor were such as to give it a preferred position. Claimant had a right to be reimbursed by Comision Reguladora in the amount which it had been called upon to pay pursuant to the terms of the bond. Its loss of this right was attributable, in the same measure as that of other Reguladora creditors, to the combination of circumstances culminating in the debtor's liquidation and seizure of assets by the Mexican Government. To make a case for review, claimant should allege and make at least a prima facie showing that but for the acts of the Mexican Government it would have been able to realize more than the amount of the appraisal. In this claimant has failed. There is no error.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 34-B

General Docket No. 2693. Claimant: Isabelle F. Miller, Executrix of the Will of Isaiah B. Miller, Surviving Partner of the Firm of Markley and Miller, a Co-partnership. Amount claimed: \$286,643.00. Award: disallowed.

On Petition for Review:

This is a claim for \$286,643.00 for losses allegedly resulting from the acts of the Government or Governor of the State of Campeche, Mexico. Claimant states that the firm of Markley

and Miller, in performing a contract to clear land, had acquired certain laborers who had been advanced money and transportation and who were obligated to perform work for the partnership to repay such debts. It is alleged that the governor of the state demanded bribes, and on refusal to comply with such demands he induced some 1,800 laborers to break such contracts. The loss in this respect was said to be \$285,000.00, while the additional \$1,643.00 represents the alleged cost of feeding such workmen after they had left. Other items claimed in the original memorandum were adjudged to be Special and do not concern us here.

There are no original documents on file to prove the items of loss, but the claimant relies on affidavits that estimate that the partnership lost an estimated 700 workmen who had been advanced an estimated average of \$250.00 each and an estimated 1,100 workmen who had been advanced an estimated average of \$100.00 each. Mexico, in its answer, raised certain technical objections which Commissioner Underwood rightfully held to be without merit.

However, the Commissioner held that the facts as set forth in the Memorial indicated that the system of employment followed by the claimant partnership in Mexico was in fact peonage, that such a system was outlawed at the time in all the enlightened countries of the world, that such a practice was beneath the standards of international law, and that no international tribunal should recognize any rights derived therefrom.

The claimant's petition for review contends that the Commissioner was merely expressing his personal views, that his finding had cited no authorities for such a decision, and that said claimant relied on a strict interpretation of Mexican law, even if the operation of the contracts created a system of peonage.

The contracts with the laborers are not furnished this Commission, nor has claimant filed any documentary evidence as to the actual indebtedness of the laborers. It is alleged that the records were lost or destroyed, presumably during the revolutionary period.

At the time of the alleged loss the agrarian labor law of Mexico provided for the recruiting of labor by the use of advances and required the laborers to work out such debts under penalty of imprisonment. The claimant has filed as evidence a document (Mem., Annex 29) which is called "Typical labor contract entered into by the partnership of Markley and Miller and the laborers, with translation." This Commission must assume, therefore, that all the contracts were similar in nature. This contract provided that the laborer hired his personal work for the term necessary to repay any advances; that he must not leave the services of the employer during such period; that he should receive 20 pesos per month as wages, together with the usual food; that he acknowledged the advance of 250 pesos; that this sum, and any other sums paid, must be repaid by personal labor; that if he left the employer any balance must be paid within eight days but such laborer could not assume any obligations and could not hire his work to any other person but was obliged to work for the employer until the sum was paid; that any day the

laborer did not work, except where excused by the employer, he should be charged one peso.

It is alleged that two classes of workmen were employed, one getting advances of as high as \$450.00 (U.S.) but averaging \$250.00 (U.S.) and the other class had advances that averaged \$100.00 (U.S.). Presumably, from the amount of the advance in the typical contract, this represented the better class of labor. The wages were 20 pesos per month, and at the rate of exchange prevailing then it would represent \$10.00 (U. S.) as the monthly wage. No other information is furnished as to the wages, but presumably the lower class labor received a lesser wage. For the better class laborers the time to complete the contract, provided the laborer did not take any days off and never drew any money for clothes or other expense, would necessitate working as long as 45 months (\$450.00) and the average would be 25 months. The time for the poorer class cannot be computed since no figures are given.

The Mexican agrarian labor law had several provisions for the protection of both employer and employee. We are only here concerned with Article 61 of that law which provides:

"The services mentioned in the present chapter, cannot be contracted except for a fixed time, which cannot exceed two years; employment contracts made for a longer time or for life are null."

The claimant rests her case on a strict interpretation of the law. The contracts, if the example is a typical one and the indebtedness is as alleged, do not comply with Mexican law since the period is indefinite and is for more, on an average at least, than two years. Under the Mexican law such contracts are null.

Furthermore the character and substance of the proof of the extent of the damages are such as to justify a rejection of the claim on the ground that it has not been satisfactorily established. The evidence as to the amount of the loss is based on the affidavit of claim and affidavits by the manager and the superintendent of the partnership. There are several other affidavits stating that the partnership had a number of laborers and that they had advanced money to them according to the custom in Mexico. Apparently the figures are based on an estimated number of workmen to whom had been advanced an estimated average amount. The claimant has alleged that some of the workmen who started in 1904 were still employed in 1911. Yet after so many years they apparently were still heavily in debt. The contract with the owner of the land, which the partnership firm was clearing, provided that the contract was to terminate January 1, 1912, yet the loss is alleged to have occurred in November, 1911, when the contract had less than two months to run. At the termination of the contract, all property of the partnership was to be turned over to the owners of the land. In an affidavit by a member of the partnership firm, Isaiah B. Miller, it was stated that the firm had "purchased" 500 or 600 "laborers" and that "Among other property Mr. Kirhy-Smith (the firm's general manager) had about one hundred and sixty laborers which Markley and Miller also purchased." Under such circumstances, and with the

contract due to terminate in a few weeks, it seems astonishing that the indebtedness could amount to \$285,000.00 (U. S.). It was at least theoretically possible for the partnership to have "sold" the laborers by assigning the accounts to another employer in a similar manner as the partnership acquired some of the workmen. Even so, the amount claimed seems unreasonably large. Secondary evidence, under the circumstances, is admissible, but such secondary evidence should be convincing. In this case, in so far as the amount claimed to have been lost, such evidence is not convincing.

The claimant contends that since Commissioner Underwood reached his decision on a single issue, he approved all other phases of the claim and that this Commission is bound thereby, and further, that since the claim was filed, it must be determined that the legality of the claim was beyond question since it had the approval of the Department of State. The submission by the Department of State or by the American Agent of a claim to a tribunal does not warrant the conclusion that the claim's validity is beyond question. Its validity must be decided by the tribunal. The claimant has not differentiated between the Department of State and the American Agent who prepared and filed the memorials as a partisan attorney. There is no merit to the claimant's contentions.

The claim must be rejected because the contracts in question, assuming that they have been satisfactorily proved, are not valid under Mexican law on which the claimant relies strictly and because the claimant has not met the burden of proof as to damages. However, this Commission considers it desirable to comment on the conclusion of Commissioner Underwood that the practice of peonage is below the standards of civilization, a finding that has been severely criticized by the claimant. In practice, the workmen were in debt to an employer. He sold the laborers by assigning such accounts for a consideration. To the workmen's account of indebtedness was added the commission of a labor agent, transportation and other expenses, and a new contract of labor for that amount was executed. Most of the workmen signed such contracts by making their marks since they were illiterate. Such laborers were then compelled to work for the new employer, and apparently they could not even select such employer. The claimant is authority for the statement that some of their laborers had worked for seven years, 1904 to 1911, and were still heavily in debt. When such workmen were no longer needed, the employer sold the accounts of indebtedness to another concern, who repeated the process. As a practical result, such laborers were never out of debt and therefore never able to offer their services on the open market.

While claimant points out that Commissioner Underwood does not cite any precedent for his position, she also fails to cite any precedents on this question involving peonage. The fact that no precise precedent can be cited does not necessarily mean that the claimant's contention must be followed.

With respect to claimant's contention as to lack of precedent,

the following statement by Judge Joseph C. Hutcheson, Jr., United States Circuit Court of Appeals, in his capacity as sole arbitrator in the international claim of *Edward J. Ryan*, is pertinent:

"Accustomed, in the decision of municipal law cases, to regarding precedents as guides to, and not obstructions of, just decision, as mere applications of the principles upon which such decisions rest, the Arbitrator has not been greatly disturbed by the lack of precise and binding precedent. The general underlying principles upon which the decision must turn seem to him to have been clearly enough laid down and expounded. What differences in viewpoint and contradictions in opinion there are as to the matters put forward here seem to him to inhere not in the statement of the underlying principles, but in their attempted application . . ." 32 A.J.I.L. (1938) 593, 613.

The general principle on which the question of peonage must be decided is well settled. If conduct affecting an alien is permitted by national legislation but is below international requirements the mere fact of legislative sanction is no bar to a finding by an international tribunal that such conduct does not accord with international standards. The only question, therefore, is whether the practice of peonage is in conformity with the standards of international law.

It is conceivable that claims might be predicated on losses based on failure to enforce contracts for such practices as prostitution or unlawful distribution of narcotics. Even though such contracts might be legal in one country, it is extremely doubtful if the government of any civilized nation would espouse such claims, or that any international tribunal would make an award therefor. That claims should not be allowed when based on such substandard laws, must be conceded.

The Settlement of Mexican Claims Act of 1942 provided that this Commission determine the claims filed before the General Claims Commission under the terms of the Convention of September 8, 1923. That covenant provided that the claims be determined under the principles of "international law, justice and equity." Justice and equity would require this Commission to hold that the practice of peonage, even though permitted by the laws of one nation, is below the standards of civilized nations, and international tribunals should not allow a claim predicated thereon. However, as noted, this claim is rejected on other grounds.

The claimant has failed to make prima facie showing of error in the appraisal which works a manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION ON PETITION FOR RECONSIDERATION OF

DECISION No. 34—SERIES B

General Docket No. 2693. Claimant: Isabelle F. Miller, et al. Amount claimed: \$286,643.00. Award: disallowed.

The claimant herein has filed a petition to reconsider the deci-

sion previously rendered by this Commission and has filed various documents in support thereof.

Claimant contends that the Commission, not having cited any precedents therefor, could not reject the claim on a theory that contracts for peonage are below the standards of international justice. While this question was discussed in the opinion, the decision itself does not reject the claim on such grounds.

The claimant also contends that as a matter of law, the fact that the United States Government, through the American Agency, sponsored the claim, precludes this Commission from passing on the value of the evidence, or the legal questions involved. The establishment of the Commission for the purpose of determination of the claims on the entire record, as is provided in the Settlement of Mexican Claims Act of 1942, clearly directs that the Commission shall consider the evidence and the law. It must, therefore, be the sole judge of the law and of the weight and effect of the evidence.

As indicated in our decision the claimant has rested its claim on the allegation that the contracts with the workmen compelling them to work out advances was permitted by Mexican Law. It now contends that the burden is on the Commission to prove by evidence that the alleged contracts are not in compliance with such law. The burden of proof, however, is on the claimant. The claimant has not produced any of the contracts or copies thereof but instead has presented a copy of an alleged contract of another employer of labor which is stated to be typical of the contracts. As stated in our former opinion, contracts of employment which are not for a fixed period are void under the Mexican law. If the exhibit is a typical contract as alleged, the contracts were not for a fixed time and are therefore void for that reason. Furthermore, the typical contract provided that they should remain in effect until the laborers had repaid all the advances of money made by the employer including future advances. In view of the amount of money alleged to have been advanced, such advances could not have been repaid by the laborers with their services within two years and the contracts therefore could not have been completed within two years. Since the Mexican law provides that no contracts with laborers may be for a period exceeding two years, such contracts are also void for that reason.

No contentions have been advanced by the claimant in its petition for reconsideration which were not advanced in its petition for review and which were not heretofore considered by the Commission.

Petition for reconsideration is, accordingly, denied.

DECISION No. 18-B

General Docket No. 2718. Claimant: John W. de Kay. Amount claimed: \$9,199,687.50. Award: disallowed.

On Petition for Review:

The claim is predicated upon an alleged breach of contract between John W. de Kay and the Mexican Government. De Kay was promoter and president of Mexican National Packing Com-

pany, Ltd., a Maine corporation, which owned concessions for the construction and operation of packing houses and various auxiliary plants and stores in Mexico. He owned fifty-one per cent of the voting trust certificates representing an equivalent proportion of the company's common stock. It is apparent from the record that in the crisis precipitated by the overthrow of President Madero de Kay was numbered among General Huerta's sympathizers and supporters. On January 8, 1914, he signed a contract with the Huerta Administration in Mexico City whereby he agreed to sell the Mexican Government fifty-one per cent of the voting trust certificates of National Packing Company for 10,000,000 pesos payable in Mexican bonds. At the same time the Huerta Administration authorized the issue of 25,000,000 pesos in bonds, 10,000,000 pesos thereof to be transferred to de Kay in payment for the voting trust certificates, and the balance to be disposed of in Europe by de Kay to provide the Huerta Administration with the sterling equivalent of not less than 12,750,000 pesos to be used in the purchase of arms and munitions. As regards the disposition of this latter sum the same contract stipulated that "the Mexican Government will accept from Mr. John W. de Kay the delivery of the arms and munitions which the Secretary of War has contracted for and which are detailed in another contract of this date made between Mr. John W. de Kay and the Mexican Government." De Kay on his part undertook to deliver cash or the shipping documents covering munitions in an amount equivalent to approximately one-half of the latter sum within forty days of the delivery of provisional certificates for the bonds and cash or like shipping documents for the balance within thirty days thereafter. The Huerta Administration on its part undertook to deliver one-half of the provisional certificates for bonds issued in payment for the voting trust certificates when it received the first lot of shipping documents and the balance when it received the second lot. On January 10, 1914, de Kay and the Huerta Administration entered into a second contract in Mexico City whereby the Mexican Government undertook to purchase arms and munitions from de Kay at European shipping points. This contract was carefully integrated with the contract of January 8, 1914. On March 2, 1914, de Kay and the financial agent of the Huerta Administration signed a further contract in London, modifying and supplementing the terms of the initial contracts in certain respects, but leaving the essential bases of the transaction as hitherto set forth. After signing the initial contracts, de Kay went to Europe where he succeeded in obtaining and shipping for Huerta's account arms and munitions to the value of at least \$400,000.00 in United States currency. Indeed it was the arrival of one of de Kay's consignments via the German steamer *Ypiranga* which precipitated the seizure of Vera Cruz by United States forces on April 21, 1914. Huerta fled Mexico in July 1914. The succeeding Carranza Administration retained the voting trust certificates of National Packing Company but repudiated the Huerta bonds. Except for a payment of interest on July 1, 1914, with funds which appear to have been loaned by de

Kay to Huerta for that purpose, nothing has ever been paid on the bonds.

It is matter of history that de Kay was acting throughout in opposition to the declared policy of his own Government. The United States Government had denounced Huerta as an usurper and refused to recognize him, was actively endeavoring to persuade those governments which had accorded recognition to withdraw it, and was about to open its own munitions markets to the Carranza forces. De Kay's services in opposition were considerable. Accordingly, in espousing the claim, the Government of the United States stipulated that "No claim is made herein on account or in respect of any arms or munitions transaction or contract whatsoever, but only and exclusively on account of the sale of the control of the Mexican National Packing Company, Limited" (Memorial, p. 6). The issue thus presented was whether the sale of a controlling interest in National Packing Company was a bona fide transaction separable from the munitions deal.

Commissioner Underwood reviewed at length the financial history of National Packing Company (Memorandum Opinion pp. 41 ff.) and the several transactions between de Kay and the Huerta Administration (*ibid.*, pp. 50 ff.). It was disclosed by the evidence reviewed that the Company had recently been through bankruptcy and reorganization, that as reorganized it had outstanding bonds in the amount of \$4,500,000.00, preferred shares in the amount of \$9,000,000.00, and common stock represented by voting trust certificates in the amount of \$3,750,000.00, and that its concessions and property were not worth enough to liquidate the outstanding bonds. It was also disclosed, as hitherto noted, that sale of the voting trust certificates was inextricably related to the munitions deal and that the real consideration for the 10,000,000 pesos in bonds was de Kay's services in procuring munitions or credits for Huerta. Bluntly described, the transactions appeared as a single venture whereby de Kay unloaded his voting trust certificates and undertook, in consideration of 25,000,000 pesos in bonds, to obtain for Huerta the 12,500,000 pesos in munitions or credits with which Huerta hoped to be able "to end the revolution." In the result Commissioner Underwood concluded that the voting trust certificates had no value whatever, that their transfer was an inseparable part of the munitions transaction, and that the claim should be disallowed.

On petition for review, it is contended (1) that the contracts of January 8, 1914, and January 10, 1914, were separate and distinct engagements, (2) that the question of the value of the voting trust certificates is immaterial since the value is established by the contract itself and since Mexico received and has retained the property for which it bargained, and (3) that, if it is proper to go beyond the contract and inquire as to the value of the voting trust certificates, the only competent evidence sustains the value as agreed upon by the contracting parties.

In support of his first contention, petitioner urges a careful reading of the contracts of January 8, 1914, January 10, 1914, and the amendment of March 2, 1914. Obviously these agree-

ments must be read in the light of the entire record. We have so read them. We are unable to find support for petitioner's contention in their terms or elsewhere. On the contrary, we are constrained to conclude that the agreements were not even an artful separation into component parts of what was conceived and executed as a single venture in aid of Huerta and for de Kay's profit. In the light of the entire record, it is of slight if any significance that de Kay assumed any foreign tax on the negotiation of 10,000,000 pesos of the bonds and Mexico any tax on the remaining 15,000,000 pesos of the bonds. Since in espousing the claim the United States stipulated that no claim was made in respect of any munitions transaction or contract whatsoever, it is apparent that the claim was properly disallowed.

Petitioner's second and third contentions invite attention to additional reasons for disallowing the claim. In an international reclamation such as this, the value of the thing received and retained is clearly material. The case is not governed by the requirements of national contract law and the authorities cited from national court decisions are inapplicable. Nor is the alternative contention, that the only competent evidence sustained the value agreed upon, supported by the record. The record points consistently to the conclusion that National Packing Company was anything but a solvent venture when the contract for sale of the voting trust certificates was made. Mortgage bonds of the Company had been sold at public sale in New York within a year at ten cents on the dollar. Claim of Charles P. Rogers and Oliver C. Carpenter, General Docket No. 13, Decision No. 19, Series B, June 9, 1944. The exhibit upon which petitioner chiefly relies indicates that any hope of gain entertained by the Huerta Administration stemmed from anticipated increases in taxes, which the Administration would be in position to impose, and from an ill-founded hope that domestic tranquillity might soon be restored, rather than from any value attributed to the common stock. After careful examination of the entire record, we find nothing to support the contention that the voting trust certificates had value. Petitioner has not made *prima facie* showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 25—B

General Docket No. 2775. Claimant: Borden Covel, Administrator of the Estate of Leo Sigmund Kuhn, deceased. Amount claimed: \$69,347.44. Award: disallowed.

On Petition for Review:

This is a claim for losses alleged to have been suffered by the claimant in the amount of 133,185.75 pesos as alleged in the memorandum of claim and increased in the Memorial to 138,694.89 pesos. It involves 12 real estate mortgages, 11 of which contain clauses requiring payment in gold or silver coin and is based on the inability to collect the full amounts due as interest because of the application of a moratorium of tables of equivalents pro-

mulgated under laws of payments for the conversion of currencies, and various monetary decrees.

For a history of Mexican monetary measures, we refer to our decision in *Scott and Bowne, Inc.*, General Docket No. 2378, Decision No. 1, Series B.

Commissioner Underwood held that no award should be made and that the claim was governed by his opinion in *George W. Cook*, Docket Nos. 1235 (part) and 3441. The two cases are similar except that Cook had invested depreciated currency and had instituted judicial proceedings to enforce his mortgage lien. These differences are not deciding factors in the principles involved and apparently Commissioner Underwood was of the same opinion. The important factor in the *Cook* case is that no denial of justice was found in a Mexican court's holding that a mortgage obligation payable in specie could be satisfied by payment in depreciated currency pursuant to applicable Mexican laws of payment and tables of equivalents. Mr. Cook claimed that he had suffered a sixty per cent reduction as a result of such payment.

On petition for review, claimant contends (1) that there is no parallel between the *Cook* case, *supra*, and the instant claim. (2) that decisions by courts of this country based on American law are not applicable because it is not shown, and cannot be presumed, that the laws of this country and Mexico are the same, (3) that international law does not permit the Mexican Government to repudiate her contracts, (4) that the claim cannot be decided under Mexican law because the claimant did not have a part, as do citizens of Mexico, in directing its policies and (5) that under the 1941 Convention this claim must be decided "without resort to methods of international arbitration" that involve 'the principles of international law, justice and equity.' "

The first contention of the claimant is disposed of above. The second refers to the citation in the *Cook* case, *supra*, of the decisions of the Supreme Court of the United States in the so-called gold cases of *Norman v. Baltimore & Ohio Railroad Co.*, 294 U. S. 240 (1935), *Nortz v. United States*, *ibid.* 317 (1935), and *Perry v. United States*, *ibid.* 330 (1935), and in the *Legal Tender Cases*, 12 Wall, 457 (1870). The pertinency of these cases is obvious.

With respect to the third and fourth contentions of the claimant, this Commission holds that a state has the right to make every effort to stabilize its currency in time of financial stress, and to make its currency legal tender for the payment of all debts. That may cause a loss in terms of foreign exchange. As long as there is no discrimination between nationals and aliens the foreign investor must accept that risk. A state is not liable under international law for fluctuations in the value of its currency. This has been more fully discussed in *Scott and Bowne, Inc.*, *supra*.

The last contention of the claimant that the clause in the preamble of the Convention of 1941 between the United States and Mexico that the two nations desired to settle the claims

"without resort to methods of international arbitration" prevents this Commission from using the prescribed procedure provided in the Convention of September 8, 1923 to adjudicate the claims under "the principles of international law, justice and equity" is without merit. The clause first above quoted clearly means, from the context, that instead of resorting to an international commission of the type established in prior agreements between the two countries it is proposed to make a lump sum settlement. Moreover, the claimant has overlooked Section 5 (a) of the Settlement of Mexican Claims Act of 1942 which prescribes the bases for our decisions.

The petitioner has not made a *prima facie* showing of error in the appraisal which works a manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 7-B

General Docket No. 3129. Claimant: Cling-Surface Company. Amount claimed: \$584.37. Amount awarded: \$116.87.

On Petition for Review:

The claimant owned two bills or "tickets" issued by Comisión Reguladora del Mercado de Henequen on April 10, 1919, and August 22, 1919, respectively, for the total sum of \$584.37. Comisión Reguladora failed and the bills were not paid. Claim was filed to recover the face value of the bills. In accord with his conclusions in the Reguladora Cases, William M. James, General Docket No. 1154 and others, Commissioner Underwood appraised the claim at \$116.87 without interest.

Essential facts concerning Comisión Reguladora and the group of claims arising from its insolvency have been set forth in our decision on petition of National Surety Company, General Docket No. 2679, Decision No. 6, Series B, November 30, 1943 and need not be restated here. Briefly, Commissioner Underwood found that the liquidation of Reguladora with resulting total loss to creditors was caused in part by faulty management and the collapse of the henequen market and in part by enforced preference accomplished through seizure of assets by the Government of Mexico. He concluded that there was no penalty for unwise management or failure to foresee the collapse of markets, that the priority enforced by the Government of Mexico in its own favor was a denial of justice, and that the record warranted an estimate of the loss due to the enforced priority at twenty per cent of the total loss.

On petition for review, claimant contends that Comisión Reguladora was a government institution, that claimant's loss was caused by acts of Reguladora officials and the seizure of assets and that the award should be for the total sum claimed.

The record discloses that some time before this claim arose the Comisión Reguladora had become a cooperative association of producers under state control. Its insolvency was the result of mismanagement and the collapse of the henequen market. The record does not show that the priority enforced in favor of the Government of Mexico was the cause of insolvency. It does

show that it contributed to prevent creditors from realizing on distribution of assets. After careful examination of the records in all Reguladora cases, Commissioner Underwood concluded that the loss due to enforced priority should be fixed at twenty per cent of the credits. It is insufficient for petitioner to point out that this was an estimate. In the nature of things it could not have been otherwise. It appears from the record to have been a fair estimate. To make a case for review, petitioner should allege and make at least a *prima facie* showing that but for the acts of the Government of Mexico it would have been able to realize more than the amount of the appraisal. In this claimant has failed. There is no error.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 30-B

<i>Claimants</i>	<i>General Docket No.</i>
Surety Realty Company.....	3223 and 3208
Land Estates, Incorporated.....	3222
Morgan J. O'Brien.....	3221
Henry Russell.....	1878
Thomas Crimmins.....	2324
Cyril Crimmins.....	3118
Martin L. Crimmins.....	3119
Clarence P. Crimmins.....	3121
Thomas Crimmins, Cyril Crimmins and Morgan J. O'Brien, Trustees.....	3120
Amount claimed: \$320,000.00. Award: disallowed.	

On Petition for Review:

In these nine cases, together with two others in which claimants have not petitioned for review, separate memorials were filed but the claims were briefed jointly, under the procedure of the General Claims Commission, and were appraised jointly by Commissioner Underwood. The claimants in these nine cases have now combined in a petition for review and it is therefore considered by this Commission as a joint claim.

The claims are predicated on an alleged loss caused by breach of contract of the Mexican Government embodied in certain treasury bonds, issued by the Huerta Administration, dated June 8, 1913, payable in gold in ten years and bearing six per cent interest payable semi-annually. The claimants have asked for a total of \$320,100.00, as principal, and \$169,293.20, as interest to the maturity date of the bonds. They also claim interest from the date of said maturity, July 1, 1923.

These claimants obtained the bonds from John W. de Kay, either directly or indirectly, and have not been paid anything on principal or interest. This Commission has held in the claim of *John W. de Kay*, Series B, Decision No. 18, that he was not entitled to an award because the contract for the voting trust certificates, which was the ostensible consideration for the bonds, was inseparably integrated with the munitions contracts. In espousing his case, the Government of the United States stipulated that no claim was made in respect of any munitions transaction or contract whatsoever. The points involved in this claim, which concern the merits in so far as they affect the *de Kay* claim, are

not reiterated here and we refer to that decision for such matters as well as a more detailed history of the transactions between the Huerta regime in Mexico and the predecessor of these claimants.

In the de Kay claim the American Agency limited the requested recovery in the following words:

"No claim is made herein on account or in respect of any arms or munitions transaction or contract whatsoever, but only and exclusively on account of the sale of the control of the Mexican National Packing Company, Limited."

The claimants herein point out that the memorials in this claim did not make such a specific limitation. It is urged that Commissioner Underwood could not consequently consider any such limitation. This does not follow. The fact that the claimants herein received the bonds, either directly or indirectly from de Kay, necessitates the same limitation on recovery, unless the claimants clearly show that the circumstances place them in a different position from that of their predecessor. In citing cases in support of the theory that the question of the consideration for the bonds as acquired by de Kay was not an issue in the instant claims, the claimants have overlooked the fact that there is a difference between pleadings and covenants of governments limiting the jurisdiction of international tribunals. All the international cases cited as holding that such tribunals were without jurisdiction since the issues were not determined by the parties are based on the fact that these issues had not been included in the relevant treaties. That point does not arise here.

That the claimants knew, or should have known, the background of the bonds in question, is not specifically denied by them. They take the position that Mexico has not proven that they did have such knowledge. The record discloses that all the claimants except the Surety Realty Company obtained ownership of the bonds in April, 1915, while this last claimant became the owner of certain bonds in July, 1916, that is, subsequent to the date of repudiation in September, 1914, of all acts and obligations of the Huerta regime by Carranza. Early in 1913 Huerta seized control of a part of Mexico and had himself proclaimed as head of the state, and while some nations eventually recognized his regime, others, notably the United States and France, did not accord him recognition. In June 1913 these bonds were issued. In November the Secretary of State of the United States, Bryan, announced that Huerta would never be recognized and that this country required that he retire from the government. It was a matter of common knowledge that the Government of the United States was bending every effort to induce the nations that had recognized the Huerta government to withdraw that recognition.

In December, 1913, President Wilson in his message to Congress stated that Huerta must and would go and that it was but a question of time until he did. He forbade the importation of arms from the United States to the Huerta forces and announced that the American Navy would prevent attempts to import arms from other countries. An attempt to land one of the munitions

shipments under the de Kay agreement with the Huerta regime precipitated the seizure of Veracruz by an American military expedition in April, 1914. Huerta was forced out in July, 1914. In September, 1914, Carranza announced, as head of a provisional government, that all the acts and obligations of the Huerta regime were repudiated. All these matters were thoroughly publicized. It would seem impossible that business men in the greatest city of the United States would fail to have some knowledge of these events. The record discloses that the photostatic copies of the bonds attached to the memorials show that attached thereto were interest coupons due January 1, 1915. All these matters must lead to the conclusion that the claimants knew, or should have known, that there might be some doubt as to the payment of the principal or interest. It was after these dates and when one interest coupon was past due that the claimants accepted the bonds. The claimants acquired the bonds in a real estate transaction. Although they were receiving the bonds from one who was not a recognized financial institution, they do not allege that any inquiry as to the bonds was made by them. The New York Mortgage and Security Company accepted certain bonds for an equity in the property involved in the transaction, but required that the claimants guarantee payment of these bonds by the posting of other collateral. These securities that company afterwards took in lieu of the bonds, which were returned to some of the claimants. In the face of these facts, the claimants cannot successfully contend that they were "innocent purchasers."

The Commission holds that these claimants, under the circumstances, have obtained no greater rights as owners of the bonds obtained from de Kay than he, himself, may have had. For the reasons set forth in the decision in that case, these claimants are not entitled to an award. It is, therefore, unnecessary to consider the other contentions in the petition for review.

The petitioners have failed to make a prima facie showing of error that worked a manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 33-B

General Docket No. 3310. Claimant: Joseph F. Rihani. Amount claimed: \$52,768.99. Award: disallowed.

On Petition for Review:

This is a claim filed by Joseph F. Rihani, a naturalized American citizen, whose proof of nationality was furnished in another claim, General Docket No. 272, and is satisfactory. The amount of the claim is \$52,768.99, representing the alleged loss during the last days of July, 1925, of chicle, stores, advances to employees and loss of prospective profits due to raids by Maya Indians in the Territory of Quintana Roo, Mexico, and is based on direct responsibility for acts of government officials, failure to apprehend and punish the persons responsible for the loss, and the consequent denial of justice.

Rihani entered into a contract with one Boyd, a representative

of Wrigley and Company, for the production of chicle, on which contract Boyd advanced certain moneys. Rihani then entered into various contracts with Mexican citizens for the exploitation of chicle, these persons applying for and eventually receiving permits for such exploitation. Pursuant to Mexican law, such permits were limited to Mexicans. Under the contracts, Rihani alleges that he advanced money, furnished supplies and transportation to three such Mexicans among others, who set up camp and started production of the chicle. These camps were raided by Maya Indians, under direction of General Mays, who claimant alleges was a Brigadier General in the Mexican Army. The chicle was seized, the camps were destroyed and the other camps abandoned as a result.

It was contended by Mexico that this business venture was that of Rihani and Company, a Mexican legal entity, and in support of this contention evidence was submitted that the said company had obtained a permit to exploit chicle a year or so prior to the time of the raids. Commissioner Underwood agreed with this contention. The claimant insists that this business venture was an individual effort and there is testimony tending to support his contention in that respect.

Apart, however, from the question as to whether the venture was Rihani's own or that of Rihani and Company, is the question concerning the ownership of the property for which indemnity is sought. It is our opinion that the evidence introduced by the claimant would not warrant a finding that he was the owner thereof. The Mexican citizens who set up the camps obtained permits in their own names. The Mexican law prohibited the issuance of such permits to aliens. They were not assignable without permission and were void if assigned to aliens.

Claimant has not supplied copies of the contracts which he allegedly entered into with these Mexican citizens. The bills for supplies, and the receipts therefor, which have been filed state that the Mexicans were contractors. Claimant in his affidavit states that they were actually employees and that it was a customary practice in Mexico to handle matters as he did. The three Mexicans whose camps were raided attempted to recover certain chicle shipments which they claimed included the stolen chicle. In a complaint filed by them before the General Agency of the Department of Agriculture and Fomento on August 21, 1935, they alleged that the loss suffered was theirs and no mention was made of the claimant. When their efforts to recover the chicle in this way proved unavailing, the three men made affidavits in support of the instant claim, asserting that the ownership of the chicle was in Rihani.

The affidavits of the three Mexicans and of Rihani all refer to contracts entered into for the production of the chicle. It would seem highly probable that these contracts would have a bearing on the actual title to the property in the camps. Although the correspondence in the file would indicate that this evidence was readily available, it was not furnished.

Claimant has not been prejudiced, as contended, by his inability to have shown, in the record upon which Commissioner Underwood based his determination, that the permit issued to Rihani and Company was cancelled. The inclusion of this evidence in the record would not have justified a finding that the claimant was owner of the chicle or of the equipment and supplies.

The weight of the evidence is that the relationship between Rihani and the Mexicans was that of creditor and debtor and not that of employer and employee. The claim is based on the hypothesis that Rihani had title to this property. The burden was on the claimant to furnish at least a prima facie proof of such ownership. This he has failed to do.

These considerations lead us to the conclusion that the petition for review has failed to make a prima facie showing of error that would work a manifest injustice to the claimant.

The petition is denied and an award will be entered on the basis of the appraisal herein.

DECISION No. 8-B

Agrarian Docket No. 14. Claimant: Z. O. Stocker and M. C. Little as Executors of the Estate of Reba Evelyn Sexton. Amount claimed: \$30,000.00. Award: \$6,267.58.

On Petition for Review:

This is a claim to be indemnified in the sum of \$30,000.00 for the alleged expropriation pursuant to Presidential decree of 1938 of 150 hectares of land situated in the Yaqui Valley, State of Sonora, Mexico, and belonging to the Estate of Reba Evelyn Sexton, an American national. The will of Reba Evelyn Sexton, admitted to probate in Arizona in 1926, designated Z. O. Stocker and M. C. Little, American nationals, as executors. The will further provided that the executors should receive seven and one-half per centum ($7\frac{1}{2}\%$) of the proceeds of sale of testatrix's properties as compensation for their services. A codicil directed that Z. O. Stocker should receive an additional \$5,000.00 from the proceeds of such sales. The claim was filed with the American Section of the Agrarian Commission on March 11, 1939. The affidavit of claim recited an assignment of five per centum (5%) to M. C. Little as compensation for his services in preparing and presenting the claim and petitioned that the award be paid as follows: five per centum (5%) to M. C. Little as assigned for attorney's services, seven and one-half per centum ($7\frac{1}{2}\%$) of the balance in equal shares to Z. O. Stocker and M. C. Little as provided in the will for executors' services, five thousand dollars (\$5,000.00) to Z. O. Stocker as provided in the codicil, and the balance to residuary legatees who were stated to be British subjects.

On June 13, 1940, after the expiration of the period for filing agrarian claims but before this claim had been appraised, attorneys for the residuary legatees filed an instrument of May 13, 1940, whereby Z. O. Stocker, individually and as executor, and M. C. Little, as executor, purported to assign ninety-one and one quarter centum ($91\frac{1}{4}\%$) of the claim to J. J. McCloy and Eus-

tace W. Tomlinson as attorneys in fact for the residuary legatees and eight and three quarters per centum ($8\frac{3}{4}\%$) of the claim to M. C. Little, "five per centum (5%) thereof in payment of his fee for the prosecution of said claim" and "three and three-quarters per centum ($3\frac{3}{4}\%$) thereof as the fee or commission to which he is entitled in respect of any such award and any such proceeds and payments as one of the Executors of the Last Will and Testament of the Estate of said Reba Evelyn Sexton, deceased, as provided in said will."

Upon appraisal of the claim, Commissioner Lawson found that the land was worth \$16,901.00 at the time of the expropriation. He found further that the nationality of the residuary legatees had not been proved and accordingly appraised the recoverable loss at \$6,267.58 made up as follows: Z. O. Stocker's legacy of \$5,000.00 plus executors' fees of \$1,267.58 ($7\frac{1}{2}\%$ of \$16,901.00). Of this sum he determined that M. C. Little was entitled to \$915.48 made up of an attorney's fee of \$313.38 (5% of \$6,267.58) and an executor's fee of \$602.10 ($3\frac{3}{4}\%$ of \$16,901.00, or \$663.79, less \$31.69 previously allowed for attorney's fee) and that Z. O. Stocker was entitled to \$5,352.10 made up of a legacy of \$4,750.00 (\$5,000.00 less an attorney's fee of 5% , or \$250.00) and an executor's fee of \$602.10 ($3\frac{3}{4}\%$ of \$16,901.00, or \$663.79, less \$31.69 previously allowed for attorney's fee). It is thus apparent that Commissioner Lawson took no account of the instrument filed in 1940 by attorneys for the residuary legatees but based his appraisal solely upon the claim as filed in 1939.

M. C. Little has accepted the appraisal as final and binding. J. J. McCloy and Eustace W. Tomlinson, as assignees for the benefit of residuary legatees under the purported assignment of May 13, 1940, have filed a petition for review. Petitioners do not question the Commissioner's conclusion that the land was worth \$16,901.00 at the time of expropriation. They contend, however, that the appraisal should be revised to include

Attorney's fee (5% of \$16,901.00).....	\$ 845.05
Executors' fees ($7\frac{1}{2}\%$ of \$16,055.95).....	1,204.20
Legacy of Z. O. Stocker	5,000.00

Total	\$7,049.25
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and that proceeding pursuant to the instrument of May 11, 1940, eight and three-quarters per centum ($8\frac{3}{4}\%$) of the above total (or \$616.81) should be awarded to M. C. Little and ninety-one and one quarter per centum ($91\frac{1}{4}\%$) of the same (or \$6,432.44) to the petitioners.

It is unnecessary to analyze further the computation of an award for which petitioners contend. Apart from the instrument of May 13, 1940, their contentions have no meaning. Reference to this instrument, a copy of which is to be found in the file, discloses that petitioners are mere conduits for the residuary legatees. The affidavit of claim stated that the residuary legatees were British nationals. In the absence of proof that they were American nationals, Commissioner Lawson excluded their entire interest from the appraisal. His appraisal was made solely on the basis of the claim filed in 1939 and solely for the benefit of

M. C. Little, executor and attorney, and Z. O. Stocker, executor and legatee. J. J. McCloy and Eustace W. Tomlinson are not claimants of record and have no standing, by virtue of the instrument of 1940 or otherwise, to petition for review.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 13-B

Agrarian Docket No. 25. Claimant: D. B. Bollinger and Ivey P. Bollinger. Amount claimed: \$20,081.17. Amount awarded: \$7,465.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$20,081.17 for the alleged expropriation pursuant to Presidential decrees of September 5, 1929, and March 6, 1931, of approximately 1,480 hectares of land situated in the Municipality of Arriaga, District of Tonala, State of Chiapas, Mexico. It appears that approximately 1,754 hectares were acquired in 1908 and 1909 for a consideration of 20,000 pesos. Taxes are said to have been paid on a fiscal value of approximately 11.5 pesos per hectare. Claimants asked 25,313.56 pesos for the land expropriated, 2,192.00 pesos for reduction in value of the land not expropriated, and 12,656.78 pesos for interest on their investment. No further evidence of value was presented.

Finding that a claim for the expropriation of 425 hectares pursuant to the decree of September 5, 1929, had been presented to the General Claims Commission (see claim of D. B. Bollinger, General Docket No. 3137, Award No. 407), Commissioner Lawson excluded this item and concluded:

Considering that no evidence except that relating to the purchase price of the property and its fiscal value accompanies the present claim, it is considered that the area expropriated may be regarded as reasonably worth 15 pesos per hectare. The total value of the 1,055 hectares considered herein on that basis is 15,825 pesos, equivalent at the rate of exchange (2.12×1) applicable on the date of expropriation (March 6, 1931) to \$7,465. The remaining items of claim appear to be without merit.

The claim was accordingly appraised at \$7,465.00 with interest from March 6, 1931.

On petition for review, claimants contend that

1. The Commissioner in assessing damages for the property expropriated from the claimants failed to award just compensation by not making an appraisal equal to the loss and damage suffered.

2. The Commissioner failed to award just compensation by not assessing severance damages which the Courts uniformly award in such cases.

3. The Commissioner in appraising the land in pesos, and then reducing such appraisal by the application of exchange rates, unwarrantedly reduced the assessment value of the land with the result that the amount of the appraisal was not just compensation.

It is of course elemental that claimants have the burden of proving values assigned. Since claimants valued like land at

fifteen pesos per hectare before the General Claims Commission. and since they presented no evidence of value to the Agrarian Claims Commission other than evidence as to the purchase price and the fiscal value, it would appear that Commissioner Lawson's appraisal was fair. Severance damages are not presumed in the absence of proof. The conversion of valuation in pesos into an appraisal in dollars was correctly made. See claim of Horace W. Corbin, Agrarian Docket No. 189, Decision No. 3, Series B. November 29, 1943. The petitioners have not made a *prima facie* showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 12-B

Agrarian Docket No. 46. Claimant: Sarah C. Cranz, Harry C. Cranz and Clara L. Yaeger. Amount claimed: \$54,562.70. Amount awarded: \$2,723.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$54,562.70 for the alleged expropriation pursuant to Presidential decree of 1937 of 489.2 hectares of land situated in the District of Guaymas, State of Sonora, Mexico. The land was purchased in 1916 by a Mexican corporation for \$5,000.00. Claim was filed in behalf of American stockholders of whom two, holding 246 of the 250 shares outstanding, were also principal stockholders in Yaqui River Land and Irrigation Company, Agrarian Docket No. 48, Decision No. 11, Series B, January 15, 1944. Commissioner Lawson appraised the claim at \$2,723.00 with interest from September 1, 1927. Contentions upon petition for review are devoted chiefly to attack upon the valuation of 20 pesos per hectare.

In both its substantive and its procedural aspects, this claim is substantially similar to Yaqui River Land and Irrigation Company, *supra*, and the same considerations must govern in both claims. For reasons set forth in our Decision No. 11, Series B, *supra*, it is concluded that petitioner has not made a *prima facie* showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 11-B

Agrarian Docket No. 48. Claimant: The Yaqui River Land and Irrigation Company. Amount claimed: \$189,100.00. Amount awarded: \$8,507.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$189,100.00 for the alleged expropriation pursuant to Presidential decree of 1937 of 1,510 hectares of land situated in the District of Guaymas, State of Sonora, Mexico. Claimant purchased the land in 1900 for \$4,000.00 and alleges that it expended 51,429 pesos on improvements prior to 1910. Between 1910 and 1920 the Yaqui Indians dispossessed claimant and destroyed all improvements. Claimant asked and obtained exemption from taxes after 1923 because of the Government's inability to cope with the Yaquis. The Indians were never subdued and claimant was never able thereafter to utilize the land. The claim as filed comprised items of \$98,150.00

for 1,510 hectares at \$65.00 per hectare, \$90,600.00 for dispossession 1927-37 at \$6.00 per hectare per year, and \$350.00 for expenses. Claimant alleged that the expropriated area consists of "highly cultivable agricultural land," filed a few opinion affidavits, but was unable to present any substantial evidence supporting its allegations as to value.

Commissioner Lawson had an inspection made in 1941, fixed reasonable value at 20 pesos per hectare, converted at the 1937 rate of exchange (3.55 x 1), and made an appraisal of \$8,507.00. To compensate for dispossession, he allowed interest from September 1, 1927. The item for expenses was disallowed.

On petition for review, claimant's contentions are devoted chiefly to an attack upon the valuation of 20 pesos per hectare. Principal emphasis is placed upon the alleged availability of water for irrigation. It is said that the lands were not more than ten miles from a "general irrigation system." It appears, however, that the only general irrigation system in this part of the valley during the period of claimant's ownership was on the opposite side of the Yaqui River. It is said that a Government irrigation system was under construction in 1937 and was actually completed three years later. However, there is nothing in the record to show where such system was located or how it could have benefited claimant's lands. There is nothing in the record or in the legal contentions to suggest that claimant ever had water rights other than those of a local nature which it had sought to exploit prior to 1910. This deficiency was pointed out to claimant by the American Section under date of June 14, 1941, and claimant's Supplementary Affidavit filed August 2, 1941, was not responsive to the American Section's inquiries. Claimant now asks leave to submit additional evidence to show the richness of the Yaqui Valley, the productivity of lands located therein, and the increase in land values of recent years. It appears neither that such evidence could be admitted under the rule prescribed by Section 4(d) of the Act of 1942 nor that it would serve any useful purpose, if admitted, in the absence of showing that adequate water rights were presently available or in reasonable prospect in relation to claimant's land. Claimant has been pressed to make such a showing throughout the proceedings and has failed to do so. The valuation was based upon an inspection, following persistent efforts to obtain all relevant evidence, and appears to have been fair.

As regards the item of claim for dispossession 1927-37, it is to be observed that no government insures settlers against the depredations of savage tribes. Liability to the nationals of other countries arises only from failure to exercise due diligence in preventing depredations or in prosecuting and punishing after the event. Ralston, International Arbitral Law and Procedure, p. 231. There has been no attempt whatever in connection with the present claim to show that Mexico was delinquent in its failure to subdue the Yaquis. Consequently the allowance of interest from September 1, 1927, "in lieu of the item of claim for loss of use of the property," would appear to have been made *ex gratia* and affords no basis for exception on the part of claimant.

The petitioner has not made a prima facie showing of error resulting in manifest injustice. The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 21-B

Agrarian Docket No. 83. Claimant: Fred B. Woodard. Amount claimed: \$15,000.00. Award: disallowed.

On Petition for Review:

This is a claim in the sum of \$15,000.00 for alleged damages due to the expropriation of 100 hectares of land in the Yaqui River Valley, in the State of Sonora, Mexico. The land was on the south side of the river and was taken by the Mexican Government under Presidential Decree in 1937 for the benefit of the Yaqui Indians.

The land was purchased by the claimant in 1906 and the deed recited a consideration of 500 pesos, but claimant alleges that the actual consideration was 1,500 pesos and an additional investment of 300 pesos for water rights. Claimant alleges that at the time of purchase some 40 acres were cleared and that claimant cleared 100 additional acres at a cost of \$400.00, built a house at a cost of \$150.00, a fence costing \$110.00, and an irrigation ditch costing \$200.00. The record discloses that claimant paid taxes up to and including 1921, that the land was sold for taxes in 1934 and that at the time of the decree of expropriation the title was in the name of a Mexican who had bought it at the tax sale.

Commissioner Lawson, in appraising the claim, pointed out that there was not sufficient proof that claimant was the owner of the land at the time of expropriation since the information obtained from the Vice Consul of the United States showed that the land had been sold for taxes three years before the date of the expropriation decree and held that the claimant was not entitled to an award.

The claimant's petition for review listed as contentions for review that the decision of Commissioner Lawson was (1) contrary to United States laws, (2) contrary to Mexican laws, (3) not supported by the record, (4) contrary to the convention, (5) contrary to justice and equity, (6) that claimant was prevented from selling property by passage of Mexican law creating the prohibited zone, (7) that Commissioner Lawson erred in not obtaining a complete statement of taxes assessed and paid on the property from Mexican authorities, (8) that the laws of both Mexico and the United States prohibit the passing of title to one purchasing at tax sales, (9) that Mexico has assessed confiscatory taxes, and (10) that if expropriation had not occurred claimant could yet pay the taxes.

There is no obligation on the part of this Commission, nor was there on the part of the Agrarian Commission, to prove claimant's alleged loss. According to the record, there was no foreclosure for unpaid taxes until the taxes were thirteen years in arrears. Since the Mexican records showed that the title to the property was in the hands of a Mexican national for three years before expropriation occurred, the burden was on the claimant to prove that the tax foreclosure was illegal which this claimant has not

done. There is no evidence whatever that there was any change in the law creating the prohibited zone that injured claimant or that taxes were confiscatory. The only evidence as to the last point indicates that the taxes were very moderate. The petition for review fails to show prima facie error in the appraisal.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 20-B

Agrarian Docket No. 98. Claimant: Estate of Rosalie Emma Caden Evans. Amount claimed: \$254,635.27. Amount awarded: \$46,988.00.

On Petition for Review:

This is an agrarian claim involving two separate tracts of land, one highly cultivated and situated in the State of Puebla, and another which was valuable chiefly for timber in the State of Veracruz. The American Section of the Agrarian Commission appraised the losses due to expropriation for the first tract at \$33,446.00 with interest, with which appraisal the petitioner was satisfied.

The second tract consisted of approximately 1,480 hectares and was acquired by Rosalie Emma Caden Evans on the foreclosure of a past due mortgage which covered certain lands and a railroad. Mrs. Evans bid in the land in 1923 for 35,200 pesos. The fiscal value of the land in 1924 is established at 48 pesos per hectare. A lease, executed in 1931, suggests that the timber was not of great commercial value. Affidavits by two Mexican nationals set values at 200 and 210 pesos respectively, but neither affidavit furnished any information as to facts upon which such opinions were based. Commissioner Lawson appraised the land at 50 pesos per hectare. A governor's decree in 1932 and a presidential decree in 1934 expropriated 930 hectares. This, computed at the rate of exchange prevailing when the land was taken, was therefore valued at \$13,542.00 with interest.

On the petition for review, petitioner attacks the adequacy of this appraisal, contending that it was based upon the evidence of the fiscal value, that the affidavits as to value were given insufficient consideration and that the record would support a substantially higher valuation.

However, the record contains little or nothing in support of precise conclusions as to value. It does not disclose what the property cost Mr. and Mrs. Evans, nor can it be determined what profits might have been derived but for the expropriations. The fiscal values of 1924 are shown in a satisfactory manner, but the evidence of the native witnesses are conclusions only without supporting facts and are uncorroborated.

In view of the unsatisfactory evidence as to value, the petition for review falls far short of establishing a prima facie showing of error in the appraisal.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 9-B

Agrarian Docket No. 101. Claimant: James E. Berry. Amount claimed: \$10,550.00. Amount awarded: \$2,428.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$10,550.00 for the expropriation of 702 hectares of land situated in the Municipality of Guasava, State of Sinaloa, Mexico. The land was purchased in 1910 for a recited consideration of 5,617.95 pesos. Claimant stated that he made an additional payment to an option holder, bringing the original cost to \$5,000.00, but no proof was submitted. There were no improvements and the land was never used. The entire tract was expropriated in 1937-38. The claim was based upon an asserted valuation of \$15.00 per hectare. In support of this valuation, claimant presented the affidavits of three Mexicans resident in Sinaloa and said to be familiar with the land in question. One stated it as his opinion that the land was worth \$15.00 to \$20.00 per hectare (Exhibit 8-A), another that it was worth 50 pesos per hectare (Exhibit 8-B), and a third, under date of July 19, 1939, that comparable land in the neighborhood was being subdivided and sold at 100 pesos per hectare (Exhibit 8-D). The fiscal valuation had been about 10 pesos per hectare.

Commissioner Lawson estimated value at 15 pesos per hectare and, converting at 1937-38 rates, made an appraisal of \$2,428.00 with interest from dates of expropriation.

Claimant died in 1942 and petition for review is filed by the administrator. Petitioner stands on the value asserted in the original claim. Petitioner also asks leave to file additional affidavits. The principal affidavit which petitioner wishes to file is already in the record (Exhibit 8-D). There is nothing to suggest that others could be received within the limitations prescribed by Section 4 (d) of the Act of 1942.

Upon the record thus presented, and following careful consideration of all pertinent evidence, this Commission concludes that the appraisal value was supported by the record. It may be noted that but for the decline of the peso the appraisal would have allowed nearly twice the consideration recited in the original instrument of purchase. Fluctuation of the peso was of course claimant's risk while he remained the owner of Mexican land. For land which remained unimproved and unused throughout the period of his ownership, claimant appears to have been allowed a fair valuation. The petitioner has failed to show error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 14-B

Agrarian Docket No. 131. Claimant: Ferdinand P. Armbruster. Amount claimed: \$52,310.00. Amount awarded: \$6,874.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$52,310.00 for the alleged expropriation pursuant to three Presidential decrees

of 1930 and 1938 and a Governor's decree of 1938 of approximately 1,273 hectares of land situated in the Cantons of Orizaba and Zongolica, State of Vera Cruz, Mexico. The land was taken from holdings of approximately 2,428 hectares acquired by claimant in 1914 for a consideration of \$12,800.00. Evidence as to fiscal values was conflicting and gave slight, if any, assistance in the matter of valuation. Apparently no taxes had been paid since 1912. Claimant made affidavit that his entire holdings were worth approximately \$100,000.00 at the time of expropriation. There is nothing in the record to indicate that claimant had ever occupied or made any use of the property.

Commissioner Lawson valued the land taken at 15 pesos per hectare and, converting at the rates prevailing on the dates of expropriation, made an appraisal of \$6,874.00 with interest from dates of expropriation.

On petition for review, claimant contends that

1. The Commissioner in assessing the claimant's land on the basis of a value fixed by Mexican agrarian authorities for payment under domestic expropriation proceedings did not award just compensation.

2. The Commissioner failed to award just compensation by not assessing severance damages which the Courts uniformly award in such cases.

3. The Commissioner in appraising the land in pesos, and then reducing such appraisal by the application of exchange rates, unwarrantedly reduced the assessment value of the land with the result that the amount of the appraisal was not just compensation.

It appears from the record that the Commissioner considered all the evidence as to value which the claimant submitted. As noted, this consisted of evidence of a purchase price of approximately 10.5 pesos per hectare and conflicting evidence as to value for fiscal purposes. There is nothing in the record which gives even color of plausibility to the value asserted in claimant's affidavit. Needless to say, the burden of proving alleged value rests upon the claimant.

As regards the remaining contentions, it is enough to say that severance damages are not presumed in the complete absence of proof and that the conversion of a valuation in pesos into an appraisal in dollars was correctly made. With respect to the latter contention, see the claim of Horace W. Corbin, Agrarian Docket No. 189, Decision No. 3 Series B, November 29, 1943. The petitioner has not made a prima facie showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 10-B

Agrarian Docket No. 135. Claimant: Alvin G. Grate. Amount claimed: \$2,435.63. Amount awarded: \$487.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$2,435.63 for the alleged expropriation pursuant to Presidential decree of 1937 of

approximately 32 hectares of land situated near Loma Bonita, District of Tuxtepec, State of Oaxaca, Mexico. Claimant purchased the land jointly with one Frank Peters in 1913 for a recited consideration of 800 pesos (Annex 9). When purchased the land appears to have been undeveloped (Annex 7). Except for an affidavit by one Brodsky estimating the cost of clearing land in the Loma Bonita region (Annex 6), and an affidavit by Peters stating that the land had been cleared and planted (Annex 7), there is nothing to indicate what claimant may have expended on development. Except for estimates contained in the same affidavits of profits derived from allegedly comparable lands, there is nothing to suggest what claimant might have been able to produce in the way of income from the land. Apparently claimant never occupied it (Memorial, p. 4). Brodsky valued like lands at approximately \$15.00 per hectare, without taking into consideration the cost of clearing, and Peters estimated the value of this land at \$15.00 per hectare without qualification. Claimant's attorney filed claim at the rate of \$75.00 per hectare, contending that claimant was entitled to "be made whole, or in other words placed in the position in which he was prior to the expropriation" (Memorial, p. 4).

Commissioner Lawson noted that the evidence of value was "meagre and unsatisfactory" and concluded that he would not be warranted in allowing more than \$15.00 per hectare. Accordingly he appraised the claim at \$487.00 with interest from the date of expropriation.

On petition for review, claimant's attorney contends that the valuation is not in accord with the evidence. He asserts that the land cost claimant \$400.00; but this is supported only by a statement found in Peters' affidavit and is negated by the instrument of purchase. He asserts that it cost \$70.00 to \$80.00 a hectare to clear the land; but this is supported only by general estimates found in Brodsky's affidavit. He asserts that claimant has not been "made whole," that he has "suffered a loss in the clearing of the land for which he has not been compensated;" but claimant is entitled only to the value of the land at the time of expropriation, not to an estimated cost of improving land similarly situated. Claimant's attorney also stresses the circumstances that he had previously sought to impeach his own witness on the issue of value; but he fails to note that no other witnesses were produced. Under date of November 27, 1939, he advised the American Section that it was "not possible to furnish further evidence" and asserted that Peters' estimate of value had been determined by the depressing effects of the Mexican expropriations. There is nothing to support this assertion or to suggest that additional evidence is now available and admissible under the due diligence rule.

On petition for review, claimant has the burden of making a prima facie showing. We have made a careful examination of the record and the legal contentions and are satisfied that no such showing has been made. The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 16-B

Agrarian Docket No. 172. Claimant: Victor W. Marsh and Olivette Marsh Madden, individually, and Olive Sheeley as guardian of King Marsh. Amount claimed: \$203,450.00. Amount awarded: \$19,580.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$203,450.00 for the alleged expropriation pursuant to Presidential decree of October 5, 1938, of 1,472.73 hectares of land situated in the Municipality of Ensenada, Northern District of Lower California, Mexico. A companion claim arising from the alleged expropriation pursuant to the same decree of 425.77 hectares similarly situated was filed in behalf of Margaret I. Reid Witts, Agrarian Docket No. 85. It appears that 1,896.50 hectares embracing the subject matter of the two claims was acquired in 1911 by predecessors in interest of the respective claimants purchasing as co-partners for a consideration of approximately \$58,000.00. Thereafter the property was considerably improved. It appears further that a partition agreement was entered into at Tiajuana, Mexico, on June 20, 1934, whereby designated lots embracing 1,472.73 hectares were transferred to the Marsh claimants and other designated lots embracing 425.77 hectares and including the lots made more valuable by improvement were transferred to Margaret I. Reid Witts. The Marsh claimants contend that this partition agreement was without legal effect because it purported to transfer land in the so-called prohibited zone and for the further reason that it was never recorded. This contention is disputed by Margaret I. Reid Witts. It appears further that an agreement for distribution of proceeds of any future sale of the property was entered into at Pasadena, California, on June 24, 1934, whereby such proceeds were to be distributed in proportion to the contributions of predecessors in interest to the original purchase price. The Marsh claimants contend that the latter agreement recognized the parties as tenants in common of undivided interests and superseded the partition agreement. This contention is also disputed by Margaret I. Reid Witts. It is to be noted that neither agreement was disclosed in the original claim filed in behalf of the Marsh claimants.

Commissioner Lawson accepted the partition agreement as at least indicative of the intention of the parties as regards their respective interests and appraised the designated 1,472.73 hectares to the Marsh claimants and the designated 425.77 hectares to Margaret I. Reid Witts. In the result an appraisal of \$19,580.00 with interest from the date of expropriation was made in behalf of the Marsh claimants and an appraisal of \$25,957.00 with interest from the date of expropriation was made in behalf of Margaret I. Reid Witts.

The Marsh claimants have petitioned for review of both claims. In their behalf it is contended, in substance, that the allocation accomplished by the appraisals is grossly disproportionate to the original investments, that it disregards the proportion of their undivided interests, and that it works a manifest injustice.

It appearing from the original records that the issue thus presented required further consideration, this Commission, under date of October 12, 1943, served Margaret I. Reid Witts with an order to show cause why the claims should not be consolidated for purposes of review and the appraisals made therein reviewed by this Commission. Under date of February 2, 1944, Margaret I. Reid Witts made return through her only authorized attorney to the order to show cause. The return tends to show that neither record has hitherto disclosed the complete history of the relationships between the parties. Exhibits attached to the return suggest that Mrs. Witts may have contributed more to the venture than has hitherto been disclosed and that the Marsh claimants may have received more from the property than has hitherto been acknowledged in any accounting. It is obvious that this Commission is without authority to determine such a controversy and, in the circumstances, that it can only enter and certify awards on the basis of the respective appraisals as provided by Section 4 of the Settlement of Mexican Claims Act of 1942.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 3-B

Agrarian Docket No. 189. Claimant: Horace W. Corbin. Amount claimed: \$171,556.75. Amount awarded: \$15,686.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$171,556.75 for the alleged expropriation of 13,126 hectares from the Hacienda Chivela situated in the District of Juchitan, State of Oaxaca, Mexico.

It appears that claimant purchased the Hacienda Chivela, comprising approximately 50,385 hectares, in 1928 for \$70,000.00 (Annex 1). It appears further that the Hacienda has been affected by seven decrees of expropriation dated May 20, 1932, August 11, 1932, September 15, 1932, October 20, 1932, March 3, 1933, December 22, 1933, and July 9, 1937, respectively (Annexes 13, 14, 15, 16, 17, 18, 19). See also Cochran to Corbin, October 30, 1940. It appears further that on April 28, 1933, claimant sold 40,000 hectares of Hacienda Chivela to Maderas del Golfo, S. A., a Mexican corporation, for 50,000 pesos (Memorial, p. 5; Annexes 12, 40). Certain of the expropriation decrees heretofore enumerated had already taken 6,472 hectares from the tract thus conveyed. The Mexican corporation, said to be controlled by an American corporation in which claimant states that he is a controlling shareholder, bought the 40,000 hectares with full knowledge of the expropriations (Memorial, p. 5; Annex 40). In explanation of the purchase by the Mexican corporation of a tract from which 6,472 hectares had already been taken, the claimant made affidavit that "all parties concerned realized and knew that portions of this land had been expropriated under the Agrarian Law but the opinion maintained by the purchasers was that within a period of time the Agrarian laws affecting the foreign owned property in Mexico would be

revoked and the property itself would return to the holders of the title in fee simple" (Annex 40). No claim was filed in behalf of American shareholders of the Mexican corporation. In selling to the Mexican corporation, claimant made no reference to any reservation of claim arising from the expropriation of the 6,472 hectares.

In appraising the instant claim, Commissioner Lawson excluded the 6,472 hectares expropriated from the 40,000 hectare tract sold to the Mexican corporation. Claim for loss of the remaining area shown to have been taken, comprising 6,654 hectares, was appraised at \$15,686.00 with interest from the dates of expropriation.

On petition for review, claimant contends (1) that claim for the 6,472 hectares first expropriated was erroneously excluded, (2) that values approved were not in accord with the evidence, and (3) that conversion from peso to dollar values should have been made at the exchange rate of 0.4985 as provided in Section 7 of the Settlement of Mexican Claims Act of 1942.

It is clear from the record that Commissioner Lawson was not in error in excluding the 6,472 hectares which were expropriated prior to 1933 from the tract sold to the Mexican corporation in that year. According to the claimant's own affidavit, this sale was negotiated with notice of the expropriations, for a satisfactory consideration, and in confidence that the expropriation decrees would be revoked. (Annex 40). If the decrees had been revoked, as anticipated, the land would have returned to the Mexican corporation, not to this claimant. The record contains nothing more than assertion that claimant had an indirect interest through an American corporation in the Mexican corporation. No claim based upon allotment from the Mexican corporation to an American corporation or to this claimant has been presented. A basis for claim in behalf of this claimant would therefore appear to be lacking.

In any event, before damages can be assessed for an alleged impairment of property right, it is required by the great preponderance of international decisions that "the actual existence of loss must be present." Whiteman, *Damages in International Law*, II, 833. The burden of proof rests upon the claimant. *Op. cit.*, II, 838-839. See claim of Winthrop C. Neilson, Mixed Claims Commission, United States and Germany. Docket No. 6481, p. 670. So far from sustaining this burden, the claimant's testimony indicates that he has recouped through sale to the Mexican corporation. Compare Hackworth, *Digest of International Law*, V, 497. We conclude that he has failed to prove a recoverable loss.

In support of the argument that appraised values are not in accord with the evidence, claimant's legal contentions are devoted chiefly to attack upon an alleged misuse of fiscal values and to pointing out alleged discrepancies between Commissioner Lawson's appraisals of value and the general standards of value established in Commissioner Underwood's Memorandum Opinion in the claim of Land Finance Company, General Docket Nos. 49 and 3457. As regards the alleged misuse of fiscal values, it is to

be observed that the evidence of actual value was meager, reliance having been placed chiefly upon affidavits as to sums expended on improvements and upon affidavits concerning certain contracts of sale which were not consummated, and that Commissioner Lawson was well warranted in taking account of the average purchase price of 1928, the average sale price of 1933 and the fiscal values in arriving at approximate values unaided by better evidence. Commissioner Underwood's schedule of values set forth in the claim of Land Finance Company, *supra*, were general or average values only and were for use only in claims in which they were considered fairly applicable in view of the particular record. On the record in the present claim, there is no showing of error resulting in manifest injustice.

As regards claimant's final contention, it is enough to say that Section 7 of the Settlement of Mexican Claims Act of 1942 has no application. That section applies only where appraisals are made "in terms of Mexican currency." This appraisal was made in dollars. Moreover, dollar values were correctly determined as of the dates of expropriation. It is immaterial that it may have taken more dollars to buy pesos when claimant purchased the land in 1928. Those who invest abroad take their chances on fluctuations in the currencies of the place of investment.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 23-B

Agrarian Docket No. 191. Claimant: Pennsylvania Plantation Company. Amount claimed: \$167,875.19. Award: disallowed.

On Petition for Review:

This is a claim to be indemnified in the sum of \$167,875.19 for losses sustained as the result of the alleged expropriation of approximately 6,715 hectares of land which is a portion of a tract of 9,550 hectares called Jolnopa, situated in the Municipalities of Tila and Tombala, District of Palenque, State of Chiapas, Mexico, under Presidential decrees of July 23 and July 30, 1934, and also by reason of an alleged illegal tax sale in 1930. In lieu of the production in evidence of a deed to the property, claimant attempted to prove ownership thereof by the following evidence:

- (a) Statements of the Mexican Government as to claimant's ownership as set forth in the Presidential decrees and in a letter dated September 26, 1938, from the Administrator of Taxes to the American Consul at Veracruz.
- (b) Affidavit of Henry de Kay dated July 28, 1939, to the effect that the books and records of the claimant company were burned in 1930 and that he personally knows that the claimant acquired the property in question.
- (c) A drawing purporting to be a chain of title wherein claimant company is included.

Commissioner Lawson held that the claimant failed to show that it ever acquired any interest in the property on account of the expropriation of which claim was made or that it established any losses which could properly be made the subject of an appraisal.

Claimant contends on petition for review that

(1) The Commissioner was in error in requiring the production of a title deed with reference to proof by claimant of its ownership of the property in view of the other corroborative evidence in the record in this connection.

(2) There is inconsistency between the holdings in the *Steinkampf and Smith* case (Agrarian Docket No. 235) and the instant case in that in the former case an executive decree was apparently deemed conclusive evidence of ownership of property.

The claimant has not produced a deed to the property and has not established that a copy thereof could not have been obtained. With respect to one of the Presidential decrees the claimant states (Mem., p. 6) that "... not having a description of the property as to boundaries it (the claimant) is not in a position to know conclusively the boundaries of the lands dotated in relation to those of the Company's." Clearly the burden of establishing the relation between dotated property and that of the claimant specifically affected rests with the claimant. Furthermore, an examination of the files indicates that on December 19, 1939, the claimant's attorney was advised to the effect that "assertions in decrees of expropriation with reference to ownership of property are not regarded by the Mexican Government nor by this Section (American Section of the Agrarian Claims Commission) as satisfactory proof of ownership."

In the case of *Philip Tarnaropoulos* (United States v. Turkey) (Nielsen's Report (1937) 331) it was stated:

"Proper evidence of title would have been a title deed or a copy thereof, if a deed was not in possession of the claimant or some other person. There is nothing to indicate that such a copy could not have been obtained on application to the local land-registry office."

So in the *Yonan* case (*ibid.* 550, 559), "a considerable quantity of affidavits" was held insufficient to establish title to property. Likewise in the *Christ Preveletzianos* case (*ibid.* 346, 347) the claimant undertook to establish ownership of property by four affidavits. It was held that allegations regarding ownership "should have been supported by better evidence."

In the *Hoachoozo Palestine Land & Development Co.* case (*ibid.* 254, 259) the claimant sought to establish its title to property by submitting a court order which contained a casual reference to it as the owner. The claim was disallowed, such proof being held insufficient evidence of ownership.

From our examination of the evidence offered by the claimant we see no error in the holding of Commissioner Lawson that the claimant failed to establish title to the land in question.

With respect to the alleged inconsistency referred to in the petitioner's second contention, we do not see that any contradiction exists between the two holdings. In the *Steinkampf and Smith* case no issue is raised as to the *quantum* of proof required to prove title. The question there presented was as to the character and scope of a mortgagee's right to recover. There was no

question concerning the sufficiency of proof of the proprietary interest of the owner of the land (Irigoyen) or of the mortgage interest of Steinkampf.

After a careful examination of the record, the petition for review and the legal contentions advanced in support thereof we find that the petitioner has not made out a *prima facie* showing of error resulting in manifest injustice.

Accordingly, the petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 4-B

Agrarian Docket No. 192. Claimant: Compania Agricola La Esmeralda. Amount claimed: \$50,000.00. Amount awarded: \$3,527.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$50,000.00 for the alleged expropriation of 313 hectares from the tract known as "La Esmeralda" situated in the Municipality of Tesechoacan, State of Veracruz, Mexico, pursuant to two Presidential decrees issued in 1934. The tract contained approximately 1,463 hectares and was purchased by claimant, an Arizona corporation, in 1912 for a stated consideration of \$10,000.00.

Commissioner Lawson valued the expropriated area at approximately 40 pesos per hectare and appraised the claim at \$3,527.00 with interest from the date of expropriation.

On petition for review, claimant contends (1) that values approved were not in accord with the evidence, (2) that Commissioner Lawson was in error in his use of fiscal values, incorporating by reference the argument advanced in support of the petition in the claim of Horace W. Corbin, Agrarian Docket No. 189, (3) that there was error in Commissioner Lawson's failure to allow severance damages, and (4) that conversion from peso to dollar values should have been made at the exchange rate of 0.4985 as provided in Section 7 of the Settlement of Mexican Claims Act of 1942, again incorporating by reference the argument advanced in support of the petition in the claim of Horace W. Corbin, *supra*.

In presenting this claim to the Agrarian Commission, claimant conceded "that definite evidence of value has not been obtained" (Memorial, p. 6). Claimant relied chiefly upon affidavits of Leroy H. Ault (Annexes 5 and 12), a letter of June 30, 1929, from one Casto Posada to Ault (Annex 9), and a letter of February 15, 1939, from the State tax collector indicating fiscal values of the expropriated areas (Annex 6). Apparently improvements on "La Esmeralda" were largely destroyed during the revolution. There is little to suggest restoration or development after 1914.

Ault was employed on the property 1906 to 1914. His testimony as to conditions prevailing thereafter is hearsay. Posada's letter indicates that he was prepared to pay 100 pesos per hectare for a small tract of 60 hectares which he had fenced and planted. The tax collector's letter indicates that the 313 hectares expropriated had a fiscal value of 12,603 pesos.

On this meager record Commissioner Lawson was warranted in having recourse to fiscal values. Severence damages are not to be assumed in the complete absence of proof. The appraisal was made in dollars and Section 7 of the Settlement of Mexican Claims Act of 1942 has no application. There is no showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 37-B

Agrarian Docket No. 194. General Docket No. 1888. Claimant: Monte Blanco Real Estate Corporation. Amount claimed: \$4,716,204.50. Award: disallowed.

These are two claims to be indemnified in the aggregate sum of \$4,716,204.50, of which the sum of \$4,393,204.50 is claimed in General Docket No. 1888, and the sum of \$323,000 is claimed in Agrarian Docket No. 194. These claims are for losses alleged to have been caused by (1) expropriations by Presidential decrees of May 13, 1926 and April 23, 1931 of 1,137 hectares and 1,385 hectares, respectively, (2) wrongful deprivation of possession of property in 1914, and (3) damages to unexpropriated land. Parts of the claims in both dockets are duplicated and, therefore, the decision herein covers both claims.

Claimant is an American corporation organized under the laws of the State of New York on May 28, 1914. On June 1, 1914, it acquired by deed from Elena Amor de Braniff, hereinafter called Elena, and her husband, Tomas Braniff, both Mexican citizens, the tract of land known as Hacienda de Monte Blanco, consisting of approximately 2,737 hectares, situated in the Municipality of Cordoba, State of Vera Cruz, Mexico.

The evidence filed in support of the claims tends to establish that the incorporation of Monte Blanco Real Estate Corporation, the claimant herein, hereinafter termed the corporation, was effected at the request of Elena and her husband, Tomas Braniff, both of whom came from Mexico to New York for that purpose. Elena became the owner of the property in question originally through inheritance from her mother. Her husband is the son of Mrs. Lorenza R. de Braniff, hereinafter called Lorenza. Elena and Tomas stated that they had, at great expense, improved and developed the hacienda by the expenditure of money which they had borrowed from Lorenza for that purpose, and that they desired to secure the repayment of the advances alleged to have been made by Lorenza and to realize some cash on their investment in the property. Thus allegedly the corporation came into being, and it was granted the said tract by deed, as above stated.

The corporation was authorized to issue 5,000 shares of the par value of \$100 each. In consideration of the delivery of said deed, stock was issued on July 3, 1914 by direction of Elena and Tomas Braniff as follows: 10 shares to qualify directors, and 4,990 shares to Miss N. Mason, a stenographer in the law office of Chester W. Cuthell. Miss Mason, admittedly, had no interest in the stock so issued to her under original Stock Certificate No. 4, as this was done for the convenience of the real parties in inter-

est. This certificate was endorsed by Miss Mason on December 28, 1914 and the names of the assignees, Lorenza for 2,600 shares, and Arthur Shilstone for 2,390 shares, appear on the back of said assignment. The name "Arthur Shilstone" was in error and it was later changed to the correct name, Herbert M. Shilstone. The said original certificate is marked "cancelled" and is pinned to the proper stub. On December 28, 1914 Certificate No. 5 for 2,600 shares was issued to Lorenza. On December 26, 1914 Lorenza entered into an agreement with Elena, her daughter-in-law, whereby the former agreed to pay to the latter \$260,000 for the 2,600 shares of stock in said corporation within one year, or on or before December 26, 1915. Under the agreement between these same parties, dated December 10, 1915, it was acknowledged that previous to the sale of said stock on December 26, 1914 Lorenza had loaned and advanced at various times to said Elena certain amounts of cash aggregating \$6,500, which sum was applied on account of the purchase price of \$260,000 for said stock. Further acknowledgment was made therein of the receipt of \$5,000 in cash since December 26, 1914, which sum was likewise applied toward the indebtedness of the purchase price. As a further payment on account of \$260,000 credit was given in said agreement to Lorenza for \$30,000, the alleged value of 1,000 shares of stock in Compania de las Fabricas de papel de San Rafael, S. A., transferred by Lorenza to Elena. It was finally set forth in said agreement that the balance of \$218,500, after deducting \$41,500, as above itemized, was to be paid by Lorenza to Elena on or before December 26, 1916, with interest at 5 per cent per annum to run from December 26, 1915.

The evidence further shows that 2,390 shares of the stock of the company were issued to Herbert M. Shilstone on October 3, 1914 for an agreed price of \$239,000. He paid \$5,000 in cash thereon and gave promissory notes for the balance of \$234,000 to Elena. He endorsed Certificate No. 8 for the said 2,390 shares in blank in December 1914 but retained the same in his possession until about January 1917, when he surrendered and delivered it, so endorsed in blank, to Lorenza, in consideration of the return of said \$5,000 in cash and the cancellation by her and return to him of said promissory notes for \$234,000 which had been endorsed to Lorenza by Elena.

In an affidavit of December 10, 1915 Lorenza stated that she owed Elena \$218,500 after the deduction of \$41,500 allegedly paid by the former to the latter. In another agreement of December 10, 1915, between said Lorenza and Elena concerning the transfer from Lorenza to Elena of the 1,000 shares above described at the alleged price of \$30,000, it was set up that the purported true sale of the stock was made for 150,000 pesos, but that provisionally and temporarily Elena was charged \$30,000 as the equivalent of said 150,000 pesos.

It was alleged and some little evidence was adduced to show that the hacienda yielded an annual profit of \$125,000 or at least more than \$10,000.

Commissioner Lawson in holding that the agrarian claim was not meritorious stated:

"The original, definite consideration involved in the acquisition of the shares, which admittedly in large part was never paid, is now attempted to be substituted by something of a very indefinite and uncertain nature. As the record stands at present, there is no satisfactory basis for concluding that the consideration involved in the acquisition by Lorenza R. de Braniff of stock of the Monte Blanco Real Estate Corporation of a par value of \$499,000 was in excess of \$46,500, if indeed that evidence can be regarded as satisfactorily establishing the transfer of consideration even to that extent. The question of the existence of a bona fide interest in the Monte Blanco Real Estate Corporation therefore, on the part of Lorenza R. de Braniff, cannot at best, be regarded as free from serious doubt."

Commissioner Lawson stated further:

"The conclusion seems inescapable in the instant claim that an effort is made, through the instrumentality of the Monte Blanco Real Estate Corporation, which, if successful, would, in substance amount to the espousal by the Government of the United States of the claim on behalf of other than American interest."

The petition for review urges that it was error to hold that the American character of the corporation was an empty shell and that the claim was in its essence one by Mexicans.

The claim of error urged has no merit. There is lacking bona fides in the transaction. The record fails to disclose the exact amount of the alleged loans and the time they were granted. In the face of alleged annual profits of \$125,000 yielded by the hacienda, it seems unreasonable that Lorenza should not have repaid such loans in whole or in part, before the incorporation of claimant. Likewise, if the debt was bona fides the claimant could have issued stock to Lorenza without all the *modus operandi* surrounding the transfer of nearly all the stock to her. Even so, it appears extraordinary that Lorenza should agree to pay for the stock, and to make agreements with Elena whereby Elena was to receive the purchase price for same in the face of the fact that Elena, according to the record, was neither a stockholder, officer or agent of the corporation. This fact assumes greater significance when it is noted that Miss Mason, to whom the 2,600 shares were first issued, had no interest in this stock and that the assignment thereof by her to Lorenza was really an original issue by the corporation to Lorenza. It does further appear that Lorenza did not pay any sums beyond the \$46,500 credited to her in Commissioner Lawson's appraisal, which is not controverted in the petition for review. He stated: "It is indicated, however, that this remaining obligation was never paid but was in fact cancelled." Furthermore, if the stock issued to Lorenza was for the purpose of paying the debt owed to her, why were agreements made between her and Elena for payment for the stock by Lorenza? The good faith of the transfer of 2,600

shares to Lorenza cannot be free from serious doubt when Elena at most received \$41,500, and when proof of advances in excess of \$6,500 appears too unsatisfactory to be accepted. Nor is the good faith of the transfer of Shilstone's shares to Lorenza established by better evidence. Forming part of the transaction furnished by claimant's evidence, it appears that Shilstone's part in it runs along the same pattern which again reflects the lack of a bona fides element in the claim.

Commissioner Underwood made the following observations regarding the reasons surrounding the organization of the claimant corporation and the mechanics employed to create the appearance of American ownership of the stock therein:

"... The Braniffs were Mexicans and they had supported Huerta. In the early summer of 1914 it was perceived that the Carrancistas were winning and in the light of practical precedent it was time to leave. Flying before the wind they arrived in New York, but they did not omit to take such steps as were calculated to delay the expected confiscation until old friendships and alignments could prevail over the newer animosities, and until in the general subsidence of feeling the expropriators could be brought to relent. It thus became desirable to invoke the protection of the United States, if that could be accomplished. The expedient was a familiar one in Mexico, and might be cleverly arranged in one way or another with the hope of at least transitory results until the American authorities could become aware of the plan."

* * * * *

"... The claim in its essence is a claim by Mexicans against the Mexican Government and under the particular facts of this case it would be an abuse of right to allow Mexicans to succeed in a claim against their own Government through the simple expedient of organizing an American corporation and transferring their property to it."

After a careful examination of all the facts in the record, we find ourselves in agreement with Commissioner Underwood's conclusion just quoted. Tomas Braniff admits that he had incurred the enmity of the then controlling party in Mexico which endangered all his activities there and made even his presence there highly hazardous. Claimants state that "This was so because Mr. Tomas Braniff had been engaged in the politics of the State of Vera Cruz and had been a candidate for election to the governorship of that State. In the course of his political activities, he had incurred the enmity of members of the opposition party who had come into the control not only of the State of Vera Cruz, but all of Mexico."

The position taken by claimant in the petition for review, far from showing error, tends to fortify the appraisals of the two Commissioners when it states: "The only thing that can be suggested is that the transfer of the Hacienda to an American Company, the Monte Blanco Company, was concocted to protect

the Hacienda from seizure by the Mexican Government—a fact stated openly in the record.” (Italics supplied.)

The record contains an affidavit by two of the grandsons of Lorenza, George T. Braniff and Oscar Tomas Braniff, who were American nationals, that on January 3, 1931 she transferred to them the 4,990 shares. She died September 22, 1932. The transfer appears to be a gift inter vivos. An affidavit by the alleged transferees would not appear to constitute convincing proof of the transfer. However, it is unnecessary to pass on this question. Neither is it necessary to pass upon the question as to the American citizenship of Lorenza herself. There is proof strongly tending to show that Lorenza had lost her American citizenship through expatriation. Lorenza had at the time of the alleged transfer several children of her own who did not possess American nationality. Under the particular circumstances of this case and in the absence of any indication of estrangement between the mother and her children, it appears manifest that the said transfer of the stock to the grandchildren who were of American nationality was part of a plan designed to protect Mexican interests.

Even if it be conceded that the legality of the formation of claimant corporation and the transfer of the stock was in accordance with municipal statutory provisions, yet in the light of the standards established in international law the Government of the United States would not be obliged to espouse a claim on behalf of a corporation organized in the United States, if the evidence showed that the real parties in interest were aliens.

Claimant urges that it is an American national; that a corporation is a distinct personality apart from its stockholders, and that it is recognized as a separate entity in American law. However, even if the stock of the claimant company were owned by American nationals, such ownership would not be sufficient to justify the claim's espousal by the American Government if it were merely a colorable ownership concocted for the purpose of protecting non-American interests.

In Borchard, *The Diplomatic Protection of Citizens Abroad* (1916) 621, it is stated:

“While American incorporation, therefore, affords a *prima facie* title to American protection, no hard and fast rules governing protection can be laid down. The Department of State, in the exercise of its discretion, requires evidence of the substantial American interest in a corporation before protection is authorized. Thus the Department uniformly requires the party in interest to place on file a properly certified copy of the charter or articles of incorporation, together with a duly executed instrument setting forth the ownership—legal or equitable—of the stock and bonds of the corporation, including such a statement of the nationality of the holders as will show in whom the greater part of the real beneficial interest lies. Complete American ownership of the stock or bonds is by no means required. *When there is reason to believe that American incorporation was sought*

merely for the purpose of securing American protection for what is in fact a foreign-owned enterprise, the Department is loath to extend its protection to the corporate entity. Such protection has been refused in cases where the incorporators were all aliens or where the majority of the stock was owned by nationals of the country against which protection is sought, or where the corporation has not been considered to represent sufficient American interests." (Italics of sentences supplied.)

V Hackworth's *Digest*, 839 contains the following statement:

"In reply to an inquiry from the Agent for the United States before the commissions established by the United States and Mexico under the conventions of 1923, as to whether a claim should be filed on behalf of a corporation, the stock of which was wholly owned by British subjects, the Department of State said: '... The Department does not consider it proper for the Government of the United States to seek to protect, under the cloak of American corporations, interests which are *wholly alien.*' " (Italics supplied.)

In a later case the Department of State reiterated the above views and added:

"With regard to the statement contained in your letter under acknowledgment that it has pointed out to you that the M—— Company pays the American income tax, the Department does not consider that the benefit derived by American citizens through the payment by the Company of the tax mentioned is substantial enough to warrant the Department in giving its consent to the presentation of the Company's claim to the appropriate Claims Commission." (Ibid., 840)

The discretion exercised by this Government in the espousal of claims is again instanced in the following:

"The Department understands that the Renault Selling Branch, Incorporated, is a corporation organized under the laws of the State of New York; that it is an agency of a French concern; and that all of its shareholders are French citizens residing in France. It would appear, therefore, that the only claim of the Selling Branch to American protection is based upon a formal and nominal compliance with the laws of the State of New York. If protection is to be allowed in such cases the result would be that a State would be free to bring within the scope of protection by the Federal Government an entity which has no federal sanction and no substantial American interest. Any number or class of aliens could, by this course claim protection for their interests nominally held by such a corporation, regardless of their duties to or loyalty toward this Government and their individual rights of citizenship. While the fact of incorporation in the United States is to be taken into consideration in determining whether protection should be extended, it is not necessarily the controlling factor in reaching a decision.

"As the question whether diplomatic protection is to be

accorded to corporations organized under the laws of the several states and the measure of such protection is deemed to rest in the discretion of the Department, and as there appears to be no actual American financial interests in the Renault Selling Branch, Incorporated, the Department does not consider that it is in a position to make the present case the subject of diplomatic interposition of this Government.

"The Second Assistant Secretary of State (Adee) to Messrs. Coudert Brothers, July 1, 1919, MS. Department of State, file 461.11R29/2." (Ibid., 840).

The issue as to the right of Monte Blanco Real Estate Corporation to appear as claimant herein, and the jurisdiction of Commissioners Lawson and Underwood over the claims were raised by the pleadings. Were they not so raised, nevertheless it is within the powers of this Commission to consider the bona fides of the claim. The evidence adduced amply supports the conclusion reached in the appraisals that the real interest behind the alleged nominally American-owned corporation was Mexican.

There is no showing of error resulting in manifest injustice.

The petition is denied and an award will be made on the bases of the appraisals.

DECISION No. 27-B

Agrarian Docket No. 207. Claimants: F. L. McCaughan, A. C. McCaughan, and Heirs of J. S. McCaughan. Amount claimed: \$10,000.00. Award: disallowed.

On Petition for Review:

This is an agrarian claim for the value of a tract of land situated in the Municipality of Durango, State of Durango, Mexico, called the Animas de Cerro Verde. The deed of purchase recites that the property consisted of 4,389 hectares of land, but claimants allege that a survey of the boundaries between the property and adjoining lands and a computation of the area enclosed by a "metes and bounds" description shows that the property actually consisted of 2,260 hectares.

This property is described as grazing and timber land. The consideration in the deed and the other evidence indicates that the claimants invested \$10,000 (U. S.) in 1912 and 1913. The tax statement indicates that the fiscal value of the property was 6,200 pesos in 1936.

It is alleged that the property was taken by the agrarians on May 1, 1936, under an expropriation decree, which decree did not describe or refer to the claimants as owners, nor to claimants' property by name or description. It is claimed that, in taking the land described in such decree, the agrarians actually took physical possession of claimants' property. In support of this allegation is the affidavit of claim, and two sworn statements by Mexicans that possession was taken of the property.

The record shows that the American Section of the Agrarian Commission repeatedly requested the claimants to furnish additional evidence as to the expropriation of the property, or that the claimants make a showing that they had applied to the Mexican authorities to regain possession of the property, as well as addi-

tional evidence as to loss of use, the value of the property and the amount of income produced from the property. None of this was furnished.

In appraising the claim Commissioner Lawson pointed out the above mentioned facts, and held that there was not a satisfactory showing that enabled him to appraise losses.

No formal petition for review has been filed by the claimants but, in a desire to be as liberal as possible as to form of pleadings, this Commission has considered claimant's letter of October 16, 1943, as such. No legal contentions accompanied that letter, nor were contained therein, but claimants indicated that it was considered that the evidence already filed was sufficient.

There is no evidence as to expropriation in the record. There is some evidence as to loss of possession which might be the basis of a claim for loss of use. No such claim is made, and it would be necessary, to support such a claim, that the claimants furnish some evidence of a denial of justice, which has not been done. In fact, claimants have stated that no appeal to local authorities was ever made.

In view of the paucity of evidence and the failure to make a prima facie showing that the appraisal of Commissioner Lawson caused a manifest injustice to the claimants, the informal petition for review must be denied.

It is ordered that no award be granted and that proper certification be made to that effect.

DECISION No. 29-B

Agrarian Docket No. 212. Claimant: Charles A. G. Forbes, as Trustee for Rosalia McAleer de Forbes (Rosalia McAleer Forbes), Elena McAleer de Buelna (Elena McAleer Buelna), Aurelia McAleer de Kendal (Aurelia McAleer Kendal), and Rosa McAleer de Gomez (Rosa McAleer Gomez). Amount claimed: \$2,819.42. Award: disallowed.

On Petition for Review:

This is a claim in the amount of \$2,819.42 and is founded upon the alleged expropriation on August 17, 1938, of 1,447.40 hectares of land comprising a part of the Rancho de Soledad de la Grulla situated about 23 miles southeast of Ensenada in the Northern District of Lower California, Mexico.

Ramona Saenz de McAleer acquired by inheritance the aforesaid Rancho containing about 2,500 hectares. Upon her death and in accordance with her will her eight surviving children received all her property share and share alike. Four of those children are American citizens and make claim herein through their trustee.

On September 15, 1930, she executed a contract with David Zarate wherein she assigned and transferred to him "all rights, actions and obligations still vested in her as owner and holder of the lands known by the name of 'Soledad de la Grulla' " for \$6,500 to be paid in monthly installments of \$100, and authorized him to transfer "the title of ownership" to the Club de Casadores de la Grulla, S. A. which was in possession of the property under a sublease from Mrs. McAleer's lessee, Compania de Desarrollo de Ensenada, S. A. Installments were paid under this contract

either to her or to her executor until November, 1934, when, it is alleged in a sworn statement of Mr. Forbes, dated January 15, 1940, \$4,350 still remained, and still remains, unpaid.

The claim, originally for \$32,369.43, was amended on May 2, 1941, by adding Rosa M. de Gomez, another daughter of Mrs. McAleer, as a claimant and reducing the amount to \$2,819.42, this representing claimants' share, or one-half of \$5,638.84, comprising items for \$4,450 which now was the alleged balance due under the contract of September 15, 1930, and for \$1,188.84, being interest thereupon. On March 28, 1941, Richard F. Kendal, executor of the estate of Mrs. McAleer, secured from the Superior Court of the State of California in and for the County of San Diego a default judgment against, among others, David Zarate purporting to annul the agreement of September 15, 1930, and to adjudge that Zarate did not have any right, title or interest in the property.

Commissioner Lawson, in disallowing the claim, found (1) that in the absence of any showing by claimants that Mrs. McAleer had retained any mortgage or lien on the property upon its transfer on September 15, 1930, her interest was terminated as of that date; (2) that there was no evidence that the relationship of Mrs. McAleer and the Club after that date was anything but that of creditor-debtor; and (3) that, therefore, the claim fell without the jurisdiction of the Agrarian Claims Settlement.

The petition for review alleges the following:

(1) That it was error for Commissioner Lawson not to find that the contract of September 15, 1930 was a nullity under Mexican law and that neither Zarate nor the Club acquired any interests therein.

(2) That Zarate's interest in the property under the contract just mentioned was nullified by the California court's decree.

(3) That Commissioner Lawson was mistaken in failing to find that title could not have passed from Mrs. McAleer until she had received full payment under the September 15, 1930, contract, even if it should be conceded that that agreement was valid.

With respect to petitioners' first contention, it is considered that the effect of the September 15, 1930, agreement was to pass all interest in the property to the vendee. The claimants have not proved their contentions as to the invalidity of that agreement. Since it does not appear that Mrs. McAleer or her estate have reacquired title to the property before August 17, 1938, the date of expropriation, claimants have not proven themselves to be proper parties to make claim herein.

As to the effect of the California court's decree, it may be noted that the real property in question was situated in Mexico; that Zarate was not a resident of California at the time of the judicial proceedings, had not been served personally but only by publication, and had not appeared; and that the decree was by default.

In *Banco Minero v. Ross et al.*, 106 Tex. 522, 172 S.W. 711 (1915), the plaintiffs, Ross and Masterson, had deposited with the defendant bank of Chihuahua, Mexico, a sum of money to be delivered to one Terrazas upon transfer by him of certain land in Mexico. After the contract for the sale of the land was concluded it was discovered that he was not the owner of the land. On August 14, 1908, he instituted a suit against Ross and Masterson in Chihuahua for specific performance of the contract. Ross had not been served personally but only by publication, had not appeared, and a default judgment was rendered by the Mexican court. On March 29, 1909, that court ordered the defendant bank, though it was not a party to the proceeding, to pay over to Terrazas the deposit, and on the next day the bank complied. Following an unsuccessful demand by the plaintiffs on the defendant bank for the repayment of the deposit, they instituted a suit in Texas on October 27, 1908, for the conversion of the deposit. The bank defended on the ground, among others, that the Mexican judgment was an adjudication of the controversy. In affirming a judgment for the plaintiffs, the Supreme Court of Texas held the Mexican judgment void as to Ross on the ground of lack of jurisdiction, and said:

"Being essentially a suit in personam, the judgment as to Ross, rendered on service by publication, was void. *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565; *Black on Judgments*, §836. Being a void judgment as to Ross, because rendered without jurisdiction, under the accepted law of this country, the trial court properly denied it any effect as to him." (Page 714.)

The Texas case assumes greater significance when it is remembered that the land involved in the Mexican suit was in Mexico. See also *Grubel v. Nassauer*, 210 N. Y. 149, 103 N. E. 1113 (1913) in which the Court of Appeals of New York refused to give effect to a Bavarian judgment founded on service by publication on a resident of New York.

The effect of a contract on title to land depends on the law of the land's situs. The record contains no evidence to show the effect of the decree rendered under the above-described circumstances either on the contract of September 15, 1930, or on the land, under Mexican law. In *American Board of Commissioners for Foreign Missions* (United States v. Turkey), (Nielsen's Report (1937) 674, 675) it was stated:

"It is recognized throughout the world that all incidents of the ownership of real property are governed by the law of the place where the property is situated."

With reference to petitioners' third contention, it is enough to state that all interest passed to the vendee upon the date of the execution of the contract of September 15, 1930. Even assuming that this contract did not convey all the interest of Mrs. McAleer, the vendor, in the property, a claim would not exist against Mexico with respect to any amount due under the contract, until she or her successors in interest exhausted the available remedies against that portion of the land (1,052.60 hectares) not affected

by the expropriation. We see no manifest injustice or prejudicial error made out by the claimants.

The petition is denied and an award will be entered on the basis of the appraisal.

DECISION No. 5-B

Agrarian Docket No. 221. Claimant: The Corralitos Company and Edward Shearson, George M. Clarke, John Henry Gewecke and Kaa Frank Blue, American Stockholders of Compania Ramos, S. A. Amount claimed: \$102,252.00. Amount awarded: \$31,775.00.

On Petition for Review:

This is a claim to be indemnified in the sum of \$102,252.00 for the alleged expropriation of 19,686 hectares of land situated in the Municipalities of Janos and Nuevo Casas Grandes, State of Chihuahua, Mexico, pursuant to two Presidential decrees of 1934 and 1936 respectively. The land was taken from holdings acquired during the years 1904-05 by Compania Ramos, S. A., and the claim, as amended (see McDonald to Lawson, January 15, 1940), is filed in behalf of American stockholders of the Mexican Company.

The lands expropriated were described as farming and pasture lands. In their Memorial claimants assigned values of \$50.00 per hectare to 1,310 hectares which they classified as farming land and \$2.00 per hectare to 18,376 hectares which they classified as pasture land. In support of these values, claimants relied upon evidence presented in the claims of The Corralitos Company et al., General Docket Nos. 1220, 1953, 3343, 3344, and John H. Steinkampf and Harry K. Smith, Agrarian Docket No. 235. No other evidence was presented in support of the values assigned. The record submitted by claimants includes only a brief memorial and the decrees of expropriation.

The record in the claim of The Corralitos Company et al., General Docket Nos. 1220, 1953, 3343, 3344 indicates that this company had very large holdings in Northern Chihuahua prior to the Revolution; that Compania Ramos, S. A., was organized in 1902 to take over or acquire lands within the so-called prohibited zone along the United States border; that the combined holdings were operated as the Corralitos Ranch; that the Ranch suffered severe losses during the revolutionary period (see Report of the Special Mexican Claims Commission, Decision No. 48); and that after the Revolution large areas were taken in a series of expropriations. In appraising the general claim, Commissioner Underwood applied the standards of value established in Land Finance Company, General Docket Nos. 49 and 3457, and allowed \$320,897.66 for the expropriation of 129,678 acres, including 2,272 acres described as irrigated land. Most of the affidavits filed with this general claim, and incorporated by reference in claimants' presentation of the instant claim, were dated about 1925 and referred to lands taken prior to August 30, 1927.

The record in the claim of John H. Steinkampf and Harry K. Smith, Agrarian Docket No. 235, indicates that the lands concerned had previously been part of the Corralitos property, had been sold for taxes in 1927, and had been partially expropriated

in 1936. In appraising this claim Commissioner Lawson allowed the American mortgagee a recovery measured by the proven impairment of his mortgage security and denied recovery to the lessee. The affidavits filed in support of estimated values (Annexes 9, 10, and 11), to which reference is made in the instant claim, were dated in 1939 and referred to certain lands taken in 1936.

In appraising the instant claim, Commissioner Lawson noted that the claim was accompanied by no evidence whatever in relation to values of the land in question, pointed out that the very general affidavits executed ten years earlier in support of the claim of The Corralitos Company et al., *supra*, furnished little assistance in arriving at the reasonable values of the land in question, and pointed out further that similar affidavits in support of the claim of John H. Steinkampf and Harry K. Smith, *supra*, did not relate specifically to the land here involved. Commissioner Lawson concluded:

"In these circumstances, and making use of such information regarding land values in this area as is available from other sources, we recommend a value of 30 pesos per hectare for the 1,310 hectares of temporal land and 4 pesos per hectare for the 18,376 hectares of pasture land expropriated. This results in a total amount of 112,804 pesos, equivalent, in round numbers, at the rate of exchange (3.55×1) applicable on the dates of expropriation, July 2, 1934 and September 30, 1936, to \$31,775."

On petition for review, claimants present the following contentions:

"1. The Commissioner failed to award the claimants just compensation by disregarding the evidence in the case, and basing the assessment of damages on information outside the record, the competence of which is not established.

"2. Since the information on which the assessment is based is regarded as confidential, this Honorable Commission should grant this Petition for Review, and exclude such evidence from consideration in the decision of the case on its merits.

"3. The Commissioner in appraising the land in pesos, and then reducing such appraisal by the application of exchange rates, unwarrantedly reduced the assessment value of the land with the result that the amount of the appraisal was not just compensation."

As regards the first of the above contentions, it is clear that petitioners are in error in asserting that Commissioner Lawson disregarded the evidence in the case. There was no evidence of values other than that incorporated by reference. The evidence incorporated by reference was considered and its insufficiency pointed out. The Corralitos holdings, including lands owned by The Corralitos Company and by Compania Ramos, S. A., covered an extensive area and embraced irrigated, farming, grazing and waste lands. There had been many expropriations of selected

areas within the larger holdings. Obviously it could not be assumed, without proof, that general affidavits filed in 1925 and in 1939 in support of claims arising from other expropriations were pertinent evidence of values affected by the instant expropriations. Claimants presented nothing to show that the affidavits sought to be incorporated by reference were pertinent to the case at hand. In such circumstances, the Commissioner was fully warranted in seeking information outside the record submitted by claimants. The national agency has unquestioned authority to make its own investigation of a claim before determining its merit for purposes of international presentation. See Feller, *The Mexican Claims Commissions*, pp. 284-289. *A fortiori* the national commissioner has like authority in making appraisals at the request of his own government. Compare Settlement of Mexican Claims Act of 1942, Section 3 (c). Petitioners' first contention is without merit.

The same must be said of petitioners' second contention. As pointed out above, Commissioner Lawson was fully warranted in making his own investigation. Indeed, if he had not investigated, it is difficult to see how he could have made an appraisal. His personal notes or memoranda, accumulated in the course of investigation, are in no respect records to which claimants' attorney may be allowed access under Section 9 of this Commission's Rules and Regulations. The opinion and appraisal are the record of the Commissioner's findings and as such have been made available to the attorney. The claimant who is dissatisfied has the burden of showing error. See the Commission's "Memorandum Concerning the Petition for Review of an Appraised Claim and Legal Contentions in Support Thereof." Claimants have failed to show error.

Claimants' third contention has been considered and rejected in the claim of Horace W. Corbin, Agrarian Docket No. 189. It is enough to say that the appraisal was made in dollars and Section 7 of the Settlement of Mexican Claims Act of 1942 has no application. There is no showing of error resulting in manifest injustice.

The petition is denied and an award will be entered on the basis of the appraisal.

CLAIMANTS UNLOCATED: AWARDS AS APPRAISED

CLAIMANTS UNLOCATED: AWARDS AS APPRAISED

An appraisal having been made of each of the following claims by a Commissioner designated by the United States within the meaning of Section 4 (a) of the Settlement of Mexican Claims Act of 1942, and the Commission's efforts to notify the claimants or their attorneys of such appraisal having in each case failed to disclose the whereabouts of either claimant or attorney, awards on the bases of the respective appraisals were entered pursuant to Section 4 (b) of the Act, as follows:

General Docket No. 639 (part). Claimant: Aaron Alt, Albert E. Baldwin, Helen M. Barton, Helen M. R. Breedlove, Estate of Robert J. Cooper, Estate of William H. Dagnall, Robert A. Douglas, Sebastian G. Eder, George T. Hammond, Estate of Gustav E. Koch, Estate of Adam Ludy, George W. Martin, A. F. Miller, H. A. F. Miller, Miguel R. Molina, Benjamin F. McDonald, William T. Marable, Frank Psikal, Franklin F. Roach, J. Anna Roach, F. A. Stahl, John F. Webb, Willard S. Wilkins. Amount claimed: \$97,567.50. Award: disallowed.

General Docket No. 785. Claimant: Conel McMulligan (McMully). Amount claimed: \$325.00. Award: disallowed.

General Docket No. 1331. Claimant: A. K. Cutting. Amount claimed: \$15,000.00. Award: disallowed.

General Docket No. 1551. Claimant: William C. Bishop. Amount claimed: \$67,690.00. Award: disallowed.

General Docket No. 1583. Claimant: Robert J. (A.) Smith. Amount claimed: \$58,320.00. Award: disallowed.

General Docket No. 1732. Claimant: I. B. Ammons. Amount claimed: \$16,430.00. Award: disallowed.

General Docket No. 2407. Claimant: W. E. Weeks. Amount claimed: \$15,000. Amount awarded: \$9,400.

General Docket No. 3240. Claimants: H. C. Baldwin, et al. Amount claimed: \$100,000.00. Award: disallowed.

SERIES C: REVIEWS, TEXAS CATTLE CLAIMS

SERIES C: REVIEWS, TEXAS CATTLE CLAIMS

The claims covered by the appended individual decisions are commonly known as "Texas Cattle Claims" and are based upon the alleged theft or destruction by raiders from Mexico of cattle and horses of American citizens in Texas. Petitions for review have been filed and reviews, respectively, have been granted by the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942. The history of these claims and the principles applicable to their determination are set forth at length in the General Memorandum Opinion of this Commission dated December 30, 1944. Therein, this Commission set forth the requirements as to proof essential to establish the liability of Mexico in these claims. It is only necessary, therefore, to apply these principles to the facts of each claim.

In each of these claims the American citizenship of claimants has been established by satisfactory proof, with such exceptions as are noted in individual decisions.

In each of the said claims the liability of Mexico is established by proof of one or more of the delinquencies required by this Commission in said General Memorandum Opinion, as necessary to create such liability. Satisfactory evidence has also been produced showing losses of livestock for which Mexico is liable pursuant to the provisions of said Opinion.

We are thus brought to the question as to the amount of claimant's awardable losses. The conditions under which cattle ranches were operated in Texas during the period in question are described in the aforementioned Memorandum Opinion of this Commission on pages 3 and 4. Under the circumstances there described it would clearly be impossible to obtain eye-witness testimony as to the loss of each particular herd or as to the exact number of cattle or horses seized by raiders from Mexico. It would likewise be impossible to obtain eye-witness testimony as to the number of cattle which were taken across the Rio Grande into Mexico, or which were sold or slaughtered there. The difficulty of obtaining eye witnesses does not relieve the claimant of the burden of establishing the fact that awardable losses have been suffered. Neither does it render ineffectual, for purposes of determining the full extent of awardable losses, evidence proving that claimant has suffered such losses in some amount. Recognizing this difficulty of exact proof, in the circumstances, the Commission has arrived at its conclusion as to the extent of awardable losses by taking into account the factors hereinafter referred to.

In reaching a determination as to the amount of such awardable losses this Commission has given consideration to the testimony as to the number of cattle and horses owned by the claimant at the beginning of the period during which thefts are alleged to have taken place. It has also examined the records of purchases or other acquisitions of cattle during this period by claimant. It has then undertaken to compute the probable natural increase of such cattle. The testimony of expert witnesses and all other

persons who testified before the Robb Commission was to the effect that the rate of natural increase of cattle in Texas during the period under consideration was 33 $\frac{1}{3}$ % per annum. While the Commission can in no case allow an award for prospective increase of cattle which had been stolen, it will take into consideration the natural increase of cattle prior to the time such cattle or the increase thereof may have been stolen, as indicated by the evidence. The Commission has examined the branding records of claimant's cattle in each claim and the evidence of actual brandings of cattle wherever such evidence is produced. It has considered reported sales of cattle. Because of the scarcity of records during the period in question, it has taken into consideration the probable amount of sales which were made but of which no record was kept, and which were not reported or included in claimant's petition either before the Robb Commission or the General Claims Commission. It has also considered the probable number of cattle butchered by claimant, his family and employees. It has furthermore undertaken to estimate the number of livestock which would be lost from natural causes, including disease, drought, exposure to weather, depredations by wild animals and like causes. It has examined the claimant's estimate of losses based upon the number of cattle alleged to be unaccounted for at the end of the period during which the losses occurred. After considering all these factors in relation to the record in each case, and the record in the case of other claimants similarly situated, the Commission has estimated the total number of cattle and horses which each claimant lost as a result of raids and thefts. In view of the conditions which prevailed on the open range, it is not possible to determine, even though specific raids have been proven, and large numbers of the claimant's cattle have been seen in Mexico, that all the losses suffered by a particular claimant were due to raids from Mexico. It has therefore been necessary to estimate the number of cattle and horses which may have been stolen or inadvertently taken and branded by citizens of the United States, or by Indians within the jurisdiction of the United States. In many cases, furthermore, the evidence would indicate that the raids and thefts began at a time prior to the commencement of the jurisdiction of this Commission. In such cases it has been necessary to allocate and determine the proportion of such thefts which occurred within the period of the jurisdiction of this Commission, that is, subsequent to July 4, 1868.

The names of the claimants, the amounts of the awards, awards of attorneys fees where requested, and any special matters are set forth in the appended individual decisions.

[The awards in the below listed Texas Cattle Claims bear interest as provided in Section 7 of the Act, from January 1, 1879.]

[Allowances of attorneys fees are made under provisions of Section 5 (c) of the Act.]

DECISION No. 61(167)-C

Claim of Estate of Martin S. Culver. General Docket No. 228. Amount claimed: \$36,150.00. Amount awarded: \$16,560.00.

DECISION No. 61(1)-C

Claim of Richard King. General Docket No. 230. Amount claimed: \$396,950.00. Amount awarded to Trustees under the last will and testament of Henrietta M. King, deceased, sole legatee under the last will and testament of Richard King, deceased, \$120,120.00.

DECISION No. 61(2)-C

Claim of Henderson Williams. General Docket No. 231. Amount claimed: \$85,000.00. Amount awarded: \$36,813.00. To Henderson Williams or his Estate, \$29,450.40; to Harold N. Marsh, 20 per cent of the award as attorney fees, \$7,362.60.

DECISION No. 61(177)-C

Claim of Estate of Louis Renaud. General Docket No. 232. Amount claimed: \$17,520.00. Amount awarded: \$5,060.00.

DECISION No. 61(3)-C

Claim of Estate of Albert Champion. General Docket No. 235. Amount claimed: \$101,090.00. Amount awarded: \$5,744.00.

DECISION No. 61(4)-C

Claim of Estate of George W. Mudd. General Docket No. 788. Amount claimed: \$1,124.00. Amount awarded: \$1,000.00.

DECISION No. 61(5)-C

Claim of Estate of Robert L. Bates. General Docket No. 968. Amount claimed: \$10,480.00. Amount awarded: \$4,550.00. To the Estate of Robert L. Bates, deceased, \$4,095.00; to Norman S. Herring, 10 per cent of the award as fees for his services as attorney, \$455.00.

DECISION No. 61(6)-C

Claim of Alexander Wierbiski. General Docket No. 1368. Amount claimed: \$72,450.00. Amount awarded: \$13,125.00. To the Estate of Alexander Wierbiski, deceased, \$12,125.00.

The following allowances of attorneys' fees: To Isaac R. Hitt and the Estate of Edward S. Bailey, deceased, jointly, \$500.00; to H. D. Lauderdale, \$500.00.

DECISION No. 61(7)-C

Claim of Estate of Martha A. Rabb. General Docket No. 1378. Amount claimed: \$138,000.00. Amount awarded: \$87,500.00.

DECISION No. 61(8)-C

Claim of Henry A. Gilpin and Fred Belden. General Docket No. 1379. Amount claimed: \$300,000.00. Amount awarded: \$46,247.00. To the Estate of Henry A. Gilpin, \$23,123.50; to the Estate of Fred Belden, \$20,811.15; to James R. Sharp and Lucien H. Mercier, jointly, as fees for their services as attorneys in connection with the Belden interests in the claim, \$2,312.35.

DECISION No. 61(9)-C

Claim of Antonio J. Yznaga. General Docket No. 1380. Amount claimed: \$101,900.00. Amount awarded to the Estate of Antonio J. Yznaga, deceased, \$3,285.71; provided that no part of this award shall be paid to Adelaide Yznaga de Cardenas or to Stella Yznaga, or to anyone claiming through either of them. The American citizenship of said Adelaide Yznaga de Cardenas and Stella Yznaga has not been established.

DECISION No. 61(10)-C

Claim of Richard King and Mifflin Kenedy (R. King and Company). General Docket No. 1383. Amount claimed: \$2,486,160.00. Amount awarded: \$91,970.00. To the Trustees under the last will and testament of Henrietta M. King, deceased, sole legatee under the last will and testament of Richard King, deceased, \$45,985.00; to the Estate of Mifflin Kenedy deceased, \$45,985.00.

DECISION No. 61(11)-C

Claim of Nicholas Champion. General Docket No. 1384. Amount claimed: \$62,220.00. Amount awarded: \$4,342.00. To the Estate of Nicholas Champion, deceased, \$3,473.60; to Harold N. Marsh, 20 per cent of the award, as attorney fees, \$868.40.

DECISION No. 61(12)-C

Claim of Peter Champion. General Docket No. 1385. Amount claimed: \$57,600.00. Amount awarded: \$2,590.75. To the Estate of Peter Champion, deceased, \$2,072.60; *provided*, that no part of this award shall be paid to Amador Fernandez or to anyone claiming through him, the American citizenship of said Amador Fernandez not having been established; to Harold N. Marsh, 20 per cent of the award as attorney fees, \$518.15.

DECISION No. 61(169)-C

Claim of Jose D. Garcia. General Docket No. 1386. Amount claimed: \$104,200.00. Amount awarded: \$328.00. To the Estate of Jose D. Garcia, deceased, \$262.40. The following allowances of attorneys' fees: To Harold N. Marsh, 10 per cent of the award, \$32.80; to George A. Nugent, Horace VanDeventer, Fred J. Coxe, and the Estate of S. L. Staples, deceased, jointly, 10 per cent of the award, \$32.80.

DECISION No. 61(13)-C

Claim of John Choate. General Docket No. 1391. Amount claimed: \$11,960.00. Amount awarded: \$7,546.00. To the Estate of John Choate, deceased, \$7,168.70; to Harold N. Marsh, 5 per cent of the award, as attorney fees, \$377.30.

DECISION No. 61(180)-C

Claim of Estate Cornelius Stillman. General Docket No. 1398. Amount claimed: \$44,800.00. Amount awarded: \$13,000.00.

DECISION No. 61(14)-C

Claim of Calvin Wright. General Docket No. 1404. Amount claimed: \$45,500.00. Amount awarded: \$11,127.00. To the Estate of Calvin Wright, deceased, \$10,014.30; to Harold N. Marsh, 10 per cent of the award, as attorney fees, \$1,112.70.

DECISION No. 61(15)-C

Claim of Estate of Joseph Wright Jr. General Docket No. 1406. Amount claimed: \$40,400.00. Amount awarded: \$7,273.00.

DECISION No. 61(16)-C

Claim of J. J. Alsop. General Docket No. 1409. Amount claimed: \$66,550.00. Amount awarded: \$8,473.00. To the Estate of J. J. Alsop, deceased, \$7,625.70; to Guy Cater, 10 per cent of the award, as attorney fees, \$847.30.

DECISION No. 61(157)-C

Claim of Estate of David Garner. General Docket No. 1412. Amount claimed: \$68,670.00. Amount awarded: \$5,000.00.

DECISION No. 61(17)-C

Claim of Alonzo A. Deavalon. General Docket No. 1413. Amount claimed: \$199,640.00. Amount awarded: \$18,704.00. To the Estate of Alonzo A. Deavalon, deceased, \$14,963.20; to Harold N. Marsh, 20 per cent of the award, as attorney fees, \$3,740.80.

DECISION No. 61(18)-C

Claim of Estate of John Ingalls and John Washington Vineyard. General Docket No. 1414. Amount claimed: \$77,000.00. Amount awarded: \$12,557.00.

DECISION No. 61(19)-C

Claim of Estate of Cornelius C. Cox. General Docket No. 1415. Amount claimed: \$171,550.00. Amount awarded: \$24,440.00.

DECISION No. 61(20)-C

Claim of Minor heirs of E. P. White (Thomas M. Coleman, Guardian). General Docket No. 1417. Amount claimed: \$110,540.00. Amount awarded: \$15,000.00.

DECISION No. 61(21)-C

Claim of Estate of Thomas M. Coleman. General Docket No. 1419. Amount claimed: \$54,400.00. Amount awarded: \$17,217.00.

DECISION No. 61(22)-C

Claim of James D. Reed. General Docket No. 1420. Amount claimed: \$171,610.00. Amount awarded: \$20,187.00. To the Estate of James D.

Reed, deceased, \$18,168.30; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$2,018.70.

DECISION No. 61(23)-C

Claim of William Woodson Wright. General Docket No. 1422. Amount claimed: \$91,000.00. Amount awarded: \$19,794.00. To the Estate of William Woodson Wright, deceased; *provided*, that no part of this award shall be paid to Carrie Winer Kelly or to any one claiming through her, American citizenship not having been established as to her, \$14,845.50. The following allowances of attorneys' fees: To Richard E. Shands, 10 per cent of the award, \$1,979.40; to Harold N. Marsh, 10 per cent of the award, \$1,979.40; to the Estate of A. H. Spann, deceased, 5 per cent of the award, \$989.70.

DECISION No. 61(24)-C

Claim of Estate of John H. Wood. General Docket No. 1424. Amount claimed: \$88,900.00. Amount awarded: \$51,853.00.

DECISION No. 61(25)-C

Claim of Estate of Thomas C. Wright and Elizabeth Maria Adams Wright. General Docket No. 1425. Amount claimed: \$27,070.00. Amount awarded: \$4,324.00.

DECISION No. 61(26)-C

Claim of Sterling N. Dobie. General Docket No. 1426. Amount claimed: \$45,000.00. Amount awarded: \$8,200.00. To the Estate of Sterling N. Dobie, deceased, \$6,560.00; to Harold N. Marsh, 20 per cent of the award, as attorney's fees, \$1,640.00.

DECISION No. 61(171)-C

Claim of Estate of Benjamin Anthony Bennett. General Docket No. 1429. Amount claimed: \$151,340.00. Amount awarded: \$14,470.00.

DECISION No. 61(27)-C

Claim of Josiah Elliff. General Docket No. 1431. Amount claimed: \$16,980.00. Amount awarded: \$2,667.00. To the Estate of Josiah Elliff, deceased, \$2,400.30; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$266.70.

DECISION No. 61(28)-C

Claim of Frost Thorn Allen and Henry Allen. General Docket No. 1432. Amount claimed: \$112,280.00. Amount awarded: \$14,327.00. To the Estate of Henry Allen, deceased, \$12,894.30; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$1,432.70.

DECISION No. 61(178)-C

Claim of William Miller. General Docket No. 1433. Amount claimed: \$167,430.00. Amount awarded: \$5,000.00. To the Estate of William Miller, deceased, \$4,250.00. The following allowances of attorneys' fees: To Harold N. Marsh, 10 per cent of the award, \$500.00; to the firm of Beasley & Beasley, 5 per cent of the award, \$250.00.

DECISION No. 61(29)-C

Claim of H. G. Jennings and Eliza A. Smith. General Docket No. 1434. Amount claimed: \$39,050.00. Amount awarded: \$4,545.00. To the Estate of H. G. Jennings, deceased, \$2,272.50; to the Estate of Eliza A. Smith, deceased, \$2,272.50.

DECISION No. 61(30)-C

Claim of Estate of Sebastian Beall. General Docket No. 1436. Amount claimed; \$133,350.00. Amount awarded: \$12,080.00.

DECISION No. 61(31)-C

Claim of Estate of Francis O. Peck. General Docket No. 1446. Amount claimed: \$158,800.00. Amount awarded: \$31,500.00.

DECISION No. 61(161)-C

Claim of Estate of C. S. Lott. General Docket No. 1447. Amount claimed: \$161,200.00. Amount awarded: \$28,875.00.

DECISION No. 61(172)-C

Claim of Estate of William Jefferson Porter. General Docket No. 1448. Amount claimed: \$131,200.00. Amount awarded: \$18,508.00.

DECISION No. 61(32)-C

Claim of Frederick J. Malone. General Docket No. 1451. Amount claimed: \$57,650.00. Amount awarded: \$15,225.00. To the Estate of Frederick J. Malone, deceased, \$12,180.00; to Harold N. Marsh, 20 per cent of the award, as attorneys' fees for himself and associates, \$3,045.00.

DECISION No. 61(33)-C

Claim of Samuel C. Skidmore. General Docket No. 1453. Amount claimed: \$190,850.00. Amount awarded: \$21,489.00. To the Estate of Samuel C. Skidmore, deceased, \$17,191.20; *provided*, that no part of this award shall be paid to Leslie Virginia Skidmore or to anyone claiming through her,—she having lost American citizenship through marriage to an alien.

The following allowance of attorneys' fees: To Harold N. Marsh, 10 per cent of the award, \$2,148.90; to George A. Nugent and C. W. Perkins, jointly, 10 per cent of the award, \$2,148.90.

DECISION No. 61(34)-C

Claim of Estate of John E. Wilson. General Docket No. 1455. Amount claimed: \$31,250.00. Amount awarded: \$17,745.00.

DECISION No. 61(35)-C

Claim of Estate of James McGrew. General Docket No. 1456. Amount claimed: \$53,360.00. Amount awarded: \$13,258.00.

DECISION No. 61(36)-C

Claim of Estate of William P. McGrew. General Docket No. 1457. Amount claimed: \$69,600.00. Amount awarded: \$17,835.00.

DECISION No. 61(37)-C

Claim of Estate of John E. Carroll. General Docket No. 1460. Amount claimed: \$65,400.00. Amount awarded: \$10,766.00.

DECISION No. 61(156)-C

Claim of Fernando G. Lane. General Docket No. 1461. Amount claimed: \$31,870.00. Amount awarded: \$3,150.00. To the Estates of Addison Lane, deceased, Fernando G. Lane, deceased, and Florin D. Lane, deceased, \$2,520.00.

The following allowances of attorneys' fees: To Harold N. Marsh, 5 per cent of the award, \$157.50; to George A. Nugent, James A. King, Edwin R. York, The Estate of S. L. Staples, deceased, and the Estate of M. L. Littleton, deceased, 10 per cent of the award, jointly, \$315.00; to the firm of White, Taylor and Chandler, 5 per cent of the award, \$157.50.

DECISION No. 61(184)-C

Claim of Estate of John Wade. General Docket No. 1464. Amount claimed: \$72,710.00. Amount awarded: \$36,946.00.

DECISION No. 61(38)-C

Claim of Mrs. Sarah Burditt. General Docket No. 1465. Amount claimed: \$100,000.00. Amount awarded: \$21,000.00. To the Estate of Mrs. Sarah Burditt, deceased, \$18,900.00; to George A. Nugent and Hyman Schwartz, jointly, 10 per cent of the award, as fees for their services as attorneys, \$2,100.00.

DECISION No. 61(39)-C

Claim of Estate of Tyrey Mussett. General Docket No. 1466. Amount claimed: \$90,000.00. Amount awarded: \$7,667.00.

This award represents 46/54ths of the loss found to have been sustained by the original claimant, since 8/54ths of such loss is not allowable because of failure to establish continuous American nationality of the ownership of such interest; such 8/54ths of the total loss has been deducted from the share that would have been the portion of John D. Mussett, son of the original claimant.

It is, therefore, provided that no part of the award shall be paid to anyone for any interest derived from the share of the said John D. Mussett, except that portion of such share which was bequeathed to Sam Lillian Rankin by the will of Isaac Mussett.

DECISION No. 61(40)-C

Claim of Estate of Amos McLaughlin. General Docket No. 1467. Amount claimed: \$15,950.00. Amount awarded: \$8,890.00.

DECISION No. 61(41)-C

Claim of John Garner. General Docket No. 1469. Amount claimed: \$47,530.00. Amount awarded: \$1,293.00. To the Estate of John Garner, deceased, \$1,163.70; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$129.30.

DECISION No. 61(42)-C

Claim of William J. McMurray. General Docket No. 1473. Amount claimed: \$39,120.00. Amount awarded: \$5,467.00. To the Estate of William J. McMurray, deceased, \$4,373.60; to Harold N. Marsh, 20 per cent of the award, as attorney's fees, \$1,093.40.

DECISION No. 61(43)-C

Claim of Estate of Sophie McGrew. General Docket No. 1474. Amount claimed: \$73,840.00. Amount awarded: \$22,309.00.

DECISION No. 61(44)-C

Claim of Estate of Robert W. McGrew. General Docket No. 1476. Amount claimed: \$80,000.00. Amount awarded: \$17,059.00.

DECISION No. 61(181)-C

Claim of Estate of William B. Lockhart; Jasper N. Key, Administrator. General Docket No. 1477. Amount claimed: \$57,530.00. Amount awarded: \$2,133.60.

DECISION No. 61(45)-C

Claim of Frances A. Harris. General Docket No. 1479. Amount claimed: \$6,275.00. Amount awarded: \$3,700.00. To the Estate of Frances A. Harris, deceased, \$3,330.00; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$370.00.

DECISION No. 61(46)-C

Claim of Estate of Levi English. General Docket No. 1481. Amount claimed: \$109,460.00. Amount awarded: \$4,268.00.

DECISION No. 61(47)-C

Claim of Estate of Leonard Bell. General Docket No. 1482. Amount claimed: \$7,520.00. Amount awarded: \$1,875.00.

DECISION No. 61(48)-C

Claim of Estate of William V. Bell. General Docket No. 1483. Amount claimed: \$20,270.00. Amount awarded: \$2,500.00.

DECISION No. 61(49)-C

Claim of Estate of John R. Burleson. General Docket No. 1484. Amount claimed: \$7,200.00. Amount awarded: \$2,630.00.

DECISION No. 61(50)-C

Claim of Estate of William C. Dickens. General Docket No. 1485. Amount claimed: \$5,390.00. Amount awarded: \$2,020.00.

DECISION No. 61(51)-C

Claim of Estates of Edward English and Margaret English. General Docket No. 1486. Amount claimed: \$141,060.00. Amount awarded: \$7,342.00.

DECISION No. 61(52)-C

Claim of Estate of William H. Pulliam. General Docket No. 1487. Amount claimed: \$53,400.00. Amount awarded: 5,300.00.

DECISION No. 61(53)-C

Claim of William B. Reagan. General Docket No. 1488. Amount claimed: \$31,700.00. Amount awarded: \$7,077.00. To the Estate of William B. Reagan, deceased, \$6,723.15; to Harold N. Marsh, 5 per cent of the award, as attorney's fees, \$353.85.

DECISION No. 61(54)-C

Claim of B. C. Greenwood. General Docket No. 1489. Amount claimed: \$42,200.00. Amount awarded: \$7,406.00. To the Estate of B. C. Green-

wood, deceased, \$6,295.10; to Harold N. Marsh, 15 per cent of the award, as attorney's fees, \$1,110.90.

DECISION No. 61(55)-C

Claim of Estate of John Perry. General Docket No. 1490. Amount claimed: \$30,240.00. Amount awarded: \$7,500.00.

DECISION No. 61(56)-C

Claim of Randolph A. Pafford. General Docket No. 1492. Amount claimed: \$98,450.00. Amount awarded: \$10,064.00. To the Estate of Randolph A. Pafford, deceased, \$9,057.60; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$1,006.40.

DECISION No. 61(57)-C

Claim of Estate of Amanda J. Roberts. General Docket No. 1494. Amount claimed: \$35,960.00. Amount awarded: \$2,636.00.

DECISION No. 61(58)-C

Claim of Estate of William B. Bowles. General Docket No. 1495. Amount claimed: \$33,760.00. Amount awarded: \$2,517.00.

DECISION No. 61(59)-C

Claim of Felix A. Bates. General Docket No. 1496. Amount claimed: \$50,800.00. Amount awarded: \$13,180.00. To the Estate of Felix A. Bates, deceased, \$11,862.00; to Norman S. Herring, 10 per cent of the award, as fees for his services as attorney, \$1,318.00.

DECISION No. 61(60)-C

Claim of Balis A. Bates. General Docket No. 1497. Amount claimed: \$62,500.00. Amount awarded: \$15,107.00. To the Estate of Balis A. Bates, deceased; *provided*, that no part of this award shall be paid to Marianne Bell or to anyone claiming through her—American citizenship not being established as to her, \$13,605.30.

The following allowances of attorneys' fees: to William Howard Payne, \$1,001.13; to Norman S. Herring, \$500.57.

DECISION No. 61(61)-C

Claim of Amos O. Strickland. General Docket No. 1499. Amount claimed: \$177,500.00. Amount awarded: \$22,615.00. To the Estate of Amos O. Strickland, deceased, \$20,353.50; to Harold N. Marsh, 10 per cent of the award as attorney's fees, \$2,261.50.

DECISION No. 61(62)-C

Claim of James M. Choate. General Docket No. 1500. Amount claimed: \$87,370.00. Amount awarded: \$15,358.00. To the Estate of James M. Choate, deceased, \$13,822.20.

The following allowances as attorneys' fees: To Harold N. Marsh, \$767.90; to the Estates of S. L. Staples, M. L. Littleton and John S. Ford, all deceased, jointly, \$767.90.

DECISION No. 61(63)-C

Claim of Junius I. Heritage. General Docket No. 1501. Amount claimed: \$106,250.00. Amount awarded: \$16,408.00. To the Estate of Junius I. Heritage, deceased, \$14,767.20; to Harold N. Marsh, 10 per cent of the award as attorney's fees, \$1,640.80.

DECISION No. 61(64)-C

Claim of Estates of William J. Slaughter and Charles H. Slaughter. General Docket No. 1502. Amount claimed: \$100,960.00. Amount awarded: \$25,648.00.

DECISION No. 61(65)-C

Claim of Thomas J. West. General Docket No. 1503. Amount claimed: \$24,440.00. Amount awarded: \$1,973.00. To the Estate of Thomas J. West, deceased, \$1,775.70; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$197.30.

DECISION No. 61(162) (C)-C

Claim of Estate of James M. Ussury. General Docket No. 1506. Amount claimed: \$271,200.00. Amount awarded: \$58,933.00.

DECISION No. 61(66)-C

Claim of Andrew J. Nations. General Docket No. 1508. Amount

claimed: \$167,200.00. Amount awarded: \$27,433.00. To the Estate of Andrew J. Nations, deceased, \$23,689.70.

The following allowances of attorneys' fees: To Harold N. Marsh, \$2,743.30; to the firm of Baker and Baker, \$750.00; to Gowan Jones, \$250.00.

DECISION No. 61(158)-C

Claim of Curtis Herring. General Docket No. 1509. Amount claimed: \$190,880.00. Amount awarded: \$3,085.00. To the Estate of Curtis Herring, deceased, \$2,776.50; to George A. Nugent and the Estate of S. L. Staples, deceased, jointly, 10 per cent of the award, as attorneys' fees, \$308.50.

DECISION No. 61(165)-C

Claim of Estate of James Murray. General Docket No. 1512. Amount claimed: \$10,000.00. Amount awarded: \$2,233.00.

DECISION No. 61(176)-C

Claim of Estate of John G. King. General Docket No. 1513. Amount claimed: \$56,000.00. Amount awarded: \$2,250.00.

DECISION No. 61(67)-C

Claim of Ransom Tullons. General Docket No. 1517. Amount claimed: \$98,720.00. Amount awarded: \$18,921.00. To the Estate of Ransom Tullons, deceased, \$17,028.90; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$1,892.10.

DECISION No. 61(68)-C

Claim of Estate of John R. Pulliam. General Docket No. 1518. Amount claimed: \$73,080.00. Amount awarded: \$14,658.00.

DECISION No. 61(69)-C

Claim of Aaron L. Oden and Timothy S. Oden. General Docket No. 1520. Amount claimed: \$96,600.00. Amount awarded: \$18,611.00. To the Estate of Aaron L. Oden, deceased, \$8,555.50; to the Estate of Timothy S. Oden, deceased, \$8,555.50.

The following allowances of attorneys' fees: To Nicholas H. Dubsick, \$1,000.00; to R. A. Taylor, Jr., \$500.00.

DECISION No. 61(70)-C

Claim of Estate of Lemuel W. Burris. General Docket No. 1524. Amount claimed: \$210,000.00. Amount awarded: \$10,000.00.

DECISION No. 61(163)-C

Claim of Estate of John O. Dewees. General Docket No. 1525. Amount claimed: \$148,850.00. Amount awarded: \$8,827.00.

DECISION No. 61(160)-C

Claim of Estate of Philip Haas. General Docket No. 1529. Amount claimed: \$14,190.00. Amount awarded: \$510.00.

DECISION No. 61(71)-C

Claim of Estate of James Martin. General Docket No. 1532. Amount claimed: \$143,690.00. Amount awarded: \$21,210.00.

DECISION No. 61(72)-C

Claim of P. T. Adams. General Docket No. 1536. Amount claimed: \$44,050.00. Amount awarded: \$12,760.00. To the Estate of P. T. Adams, deceased, \$10,208.00.

The following allowances as fees for services of attorneys: To Phil D. Swing, 10 per cent of the award, \$1,276.00; to Horace VanDeventer, 10 per cent of the award, \$1,276.00.

DECISION No. 61(73)-C

Claim of Estate of Benjamin Duncan. General Docket No. 1538. Amount claimed: \$27,750.00. Amount awarded: \$5,131.00.

DECISION No. 61(166)-C

Claim of Estate of D. C. Lyons. General Docket No. 1544. Amount claimed: \$25,100.00. Amount awarded: \$2,000.00

DECISION No. 61(74)-C

Claim of Estate of Thomas J. Barfield. General Docket No. 1555. Amount claimed: \$11,000.00. Amount awarded: \$2,079.00.

DECISION No. 61(75)-C

Claim of Estate of William M. Franklin. General Docket No. 1559. Amount claimed: \$96,660.00. Amount awarded: \$2,000.00.

DECISION No. 61(76)-C

Claim of William B. Grimes. General Docket No. 1565. Amount claimed: \$58,400.00. Amount awarded: \$5,738.00. To the Estate of William B. Grimes, deceased, \$5,164.20; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$573.80.

DECISION No. 61(77)-C

Claim of William S. B. Owens. General Docket No. 1566. Amount claimed: \$82,800.00. Amount awarded: \$11,552.00. To the Estate of William S. B. Owens, deceased; *provided* that no part of this award shall be paid to the heirs of John Dodd, or to anyone claiming through him or them—neither the identity nor American citizenship of his heirs having been established, \$11,552.00.

DECISION No. 61(78)-C

Claim of Estate of DeWitt C. Grover. General Docket No. 1571. Amount claimed: \$37,700.00. Amount awarded: \$7,364.00.

DECISION No. 61(79)-C

Claim of James Wilson and Joseph P. Wilson. General Docket No. 1572. Amount claimed: \$35,260.00. Amount awarded: \$6,965.00. To the Estate of James Wilson, deceased, \$3,134.25; to the Estate of Joseph P. Wilson, deceased, \$3,134.25; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$696.50.

DECISION No. 61(168)-C

Claim of Estate of Patrick Burk. General Docket No. 1576. Amount claimed: \$16,750.00. Amount awarded: \$3,626.00.

DECISION No. 61(80)-C

Claim of Estate of Joshua V. Stewart. General Docket No. 1580. Amount claimed: \$17,300.00. Amount awarded: \$3,262.00.

DECISION No. 61(81)-C

Claim of Estate of Giles Carter. General Docket No. 1584. Amount claimed: \$97,000.00. Amount awarded: \$19,670.00.

DECISION No. 61(174)-C

Claim of Henry T. Clare. General Docket No. 1585. Amount claimed: \$44,290.00. Amount awarded: \$5,215.00.

DECISION No. 61(82)-C

Claim of Estate of James E. Little. General Docket No. 1586. Amount claimed: \$21,160.00. Amount awarded: \$4,200.00.

DECISION No. 61(83)-C

Claim of Estate of Henry H. Brockman. General Docket No. 1589. Amount claimed: \$27,200.00. Amount awarded: \$1,965.00.

DECISION No. 61(84)-C

Claim of James Eastwood. General Docket No. 1595. Amount claimed: \$54,480.00. Amount awarded: \$4,707.00. To the Estate of James Eastwood, deceased, \$4,236.30; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$470.70.

DECISION No. 61(85)-C

Claim of Jose M. Penalzoa. General Docket No. 1596. Amount claimed: \$60,500.00. Amount awarded: \$6,165.00. To the Estate of Jose M. Penalzoa, deceased, \$5,548.50; to George G. Clifton and W. C. Linden, Sr., jointly, 10 per cent of the award, as attorneys fees, \$616.50.

DECISION No. 61(86)-C

Claim of John Q. Adams and his wife, Sarah A. Adams (Mr. and Mrs. John Q. Adams). General Docket No. 1599. Amount claimed: \$20,000.00. Amount awarded: \$14,156.00. To the Estates of John Q. Adams, deceased, (a native of the State of Tennessee) and of his wife, Sarah A. Adams, deceased, \$12,740.40; to Horace VanDeventer, 10 per cent of the award, as attorney's fees, \$1,415.60.

DECISION No. 61(87)-C

Claim of Elijah A. Bates. General Docket No. 1601. Amount claimed: \$20,540.00. Amount awarded: \$2,390.00. To the Estate of Elijah A. Bates, deceased, \$2,151.00; to Norman S. Herring, 10 per cent of the award, as fees for his services as attorney, \$239.00.

DECISION No. 61(88)-C

Claim of Hamilton Bennett. General Docket No. 1602. Amount claimed: \$254,700.00. Amount awarded: \$18,750.00. To the Estate of Hamilton Bennett, deceased, \$14,062.50.

The following allowances of attorneys' fees: To George A. Nugent and the Estate of S. L. Staples, deceased, jointly, \$1,875.00; to Harold N. Marsh, \$937.50; to Norman S. Herring, \$937.50; to William Schwartz and Morris M. Cahen, jointly, \$937.50.

DECISION No. 61(89)-C

Claim of Joseph G. Brown. General Docket No. 1604. Amount claimed: \$113,600.00. Amount awarded: \$3,549.00. To the Estate of Joseph G. Brown, deceased, \$3,194.10; to Harold N. Marsh, 10 per cent of the award as attorney's fees, \$354.90.

DECISION No. 61(90)-C

Claim of Estate of William A. Brown. General Docket No. 1605. Amount claimed: \$241,950.00. Amount awarded: \$1,184.00.

DECISION No. 61(91)-C

Claim of Estate of James Cornell. General Docket No. 1612. Amount claimed: \$102,660.00. Amount awarded: \$5,993.00.

DECISION No. 61(92)-C

Claim of Estate of Henry Cox. General Docket No. 1613. Amount claimed: \$4,550.00. Amount awarded: \$1,100.00.

DECISION No. 61(93)-C

Claim of William Cox. General Docket No. 1615. Amount claimed: \$12,585.00. Amount awarded: \$2,652.00. To the Estate of William Cox, deceased, \$2,254.20; to R. W. Tucker, 15 per cent of the award, as attorney's fees, \$397.80.

DECISION No. 61(94)-C

Claim of Louis C. Davenport. General Docket No. 1618. Amount claimed: \$26,240.00. Amount awarded: \$2,220.00. To the Estate of Louis C. Davenport, deceased, \$1,998.00; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$222.00.

DECISION No. 61(95)-C

Claim of Estate of William M. Evans. General Docket No. 1620. Amount claimed: \$27,880.00. Amount awarded: \$1,008.00.

DECISION No. 61(96)-C

Claim of Estate of James M. Hess. General Docket No. 1635. Amount claimed: \$1,000.00. Amount awarded: \$1,000.00.

DECISION No. 61(97)-C

Claim of Estate of John Leakey. General Docket No. 1642. Amount claimed: \$29,000.00. Amount awarded: \$2,500.00.

DECISION No. 61(98)-C

Claim of Estate of Thales N. McKinney. General Docket No. 1646. Amount claimed \$78,500.00. Amount awarded: \$4,613.00.

DECISION No. 61(155)-C

Claim of H. J. Marshall. General Docket No. 1648. Amount claimed: \$12,960.00. Amount awarded: \$2,500.00. To the Estate of H. J. Marshall, deceased, \$2,250.00; to Harold N. Marsh, 10 per cent of the award as attorneys' fees for services of himself and associates, \$250.00.

DECISION No. 61(99)-C

Claim of Jacob Postert. General Docket No. 1651. Amount claimed: \$15,480.00. Amount awarded: \$1,500.00. To the Estate of Jacob Postert, deceased, \$1,350.00; to the Estate of H. C. Duffy, deceased, 10 per cent of the award, as attorney's fees, \$150.00.

DECISION No. 61(159)-C

Claim of Estate of John W. Spear. General Docket No. 1661. Amount claimed: \$7,410.00. Amount awarded: \$1,210.00.

DECISION No. 61(100)-C

Claim of Estate of George W. Patterson. General Docket No. 1664. Amount claimed: \$100.00. Amount awarded: \$100.00.

DECISION No. 61(101)-C

Claim of Estate of James M. Patton. General Docket No. 1665. Amount claimed: \$12,120.00. Amount awarded: \$780.00.

DECISION No. 61(102)-C

Claim of Estate of Cicero Perry. General Docket No. 1666. Amount claimed: \$108,920.00. Amount awarded: \$11,878.00.

DECISION No. 61(103)-C

Claim of Estate of William W. Holbrook. General Docket No. 1680. Amount claimed: \$44,710.00. Amount awarded: \$8,722.00.

DECISION No. 61(175)-C

Claim of Estate of George L. Turner. General Docket No. 1682. Amount claimed: \$16,520.00. Amount awarded: \$3,304.00.

DECISION No. 61(104)-C

Claim of Estate of Joel Casey. General Docket No. 1683. Amount claimed: \$30,600.00. Amount awarded: \$5,000.00.

DECISION No. 61(105)-C

Claim of Francis Winans, et al. General Docket No. 1684. Amount claimed: \$170,660.00. Amount awarded: \$5,626.00. To the Estates of Francis Winans, Edward Winans and William Winans, deceased, jointly, \$5,063.40; to George A. Nugent and Horace Van Deventer, jointly, 10 per cent of the award, as attorneys' fees, \$562.60.

DECISION No. 61(106)-C

Claim of John Teal. General Docket No. 1686. Amount claimed: \$57,340.00. Amount awarded: \$10,928.00. To the Estate of John Teal, deceased, \$9,835.20; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$1,092.80.

DECISION No. 61(107)-C

Claim of Estate of F. M. Swift. General Docket No. 1694. Amount claimed: \$68,240.00. Amount awarded: \$1,617.00.

DECISION No. 61(108)-C

Claim of Estate of John Chambliss. General Docket No. 1696. Amount claimed: \$16,940.00. Amount awarded: \$4,074.00.

DECISION No. 61(109)-C

Claim of Samuel H. Smith. General Docket No. 1712. Amount claimed: \$169,430.00. Amount awarded: \$12,500.00. To the Estate of Samuel H. Smith, deceased, \$11,250.00; to Harold N. Marsh, 10 per cent of the award, as attorney's fees, \$1,250.00.

DECISION No. 61(110)-C

Claim of Edgar M. Miller. General Docket No. 1716. Amount claimed: \$17,670.00. Amount awarded: \$2,856.00. To the Estate of Edgar M. Miller, deceased, \$2,427.60.

The following allowances of attorneys' fees: To Harold N. Marsh, 10 per cent of the award, \$285.60; to the Estates of S. L. Staples and M. L. Littleton, both deceased, jointly, 5 per cent of the award, \$142.80.

DECISION No. 61(111)-C

Claim of Charles H. Vivian. General Docket No. 1718. Amount claimed: \$8,770.00. Amount awarded: \$2,120.00. To the Estate of Charles H. Vivian, deceased, \$1,590.00.

The following allowances of attorneys' fees: To Harold N. Marsh, 7½ per cent of the award, \$159.00; to the Estates of S. L. Staples and M. L. Littleton, both deceased, jointly, 7½ per cent of the award, \$159.00; to the Estate of A. P. Johnson, deceased, 10 per cent of the award, \$212.00.

DECISION No. 61(112)-C

Claim of Beaufort P. Vivian. General Docket No. 1720. Amount claimed:

\$11,140.00. Amount awarded: \$1,278.00. To the Estate of Beaufort P. Vivian, deceased, \$1,022.40; *provided*, that no part of this award shall be paid to Anita Vivian or to Pietra Vivian, children of Charles Vivian, or to anyone claiming through said children,—there being no proof as to American citizenship on their part.

The following allowances of attorneys' fees: To Harold N. Marsh, \$95.85; to the Estate of A. P. Johnson, deceased, \$63.90; to Ben V. King, \$31.95; to the Estate of S. L. Staples, deceased, \$31.95; to the Estate of M. L. Littleton, deceased, \$31.95.

DECISION No. 61(113)—C

Claim of Estate of Gray White. General Docket No. 1721. Amount claimed: \$8,635.00. Amount awarded: \$2,280.00.

DECISION No. 61(114)—C

Claim of Estate of William Votaw. General Docket No. 1727. Amount claimed: \$226,810.00. Amount awarded: \$36,878.00.

DECISION No. 61(183)—C

Claim of J. E. Lawhon, J. M. B. Lawhon, H. P. Lawhon, W. W. Lawhon. General Docket No. 1729. Amount claimed: \$54,900.00; Amount awarded: \$20,630.00. To the Estates of J. E. Lawhon, J. M. B. Lawhon, H. P. Lawhon and W. W. Lawhon, all deceased,—jointly \$20,630.00.

DECISION No. 61(115)—C

Claim of Andrew D. Everett. General Docket No. 1731. Amount claimed: \$48,750.00. Amount awarded: \$3,773.00. To the Estate of Andrew D. Everett, deceased, \$3,273.00; *provided*, that no part of this award shall be paid to the four children of Mrs. Phoebe Ragsdale (Everett) and her first husband Peter H. Ragsdale, or to anyone claiming through said children, there being no proof as to their identity or their American citizenship.

The following allowances of attorneys' fees: To Harold N. Marsh, \$250.00; to the Estates of S. L. Staples, M. L. Littleton, and John S. Ford, all deceased, jointly, \$250.00.

DECISION No. 61(116)—C

Claim of Estate of Thomas Dewees. General Docket No. 1733. Amount claimed: \$52,150.00. Amount awarded: \$13,692.00.

DECISION No. 61(117)—C

Claim of Rachel Parker. General Docket No. 1734. Amount claimed: \$22,460.00. Amount awarded: \$6,300.00. To the Estate of Rachel Parker, deceased, \$5,950.00; to E. Garland Brown and William L. Scarborough, jointly, as fees for their services as attorneys, \$350.00.

DECISION No. 61(118)—C

Claim of Green Holland. General Docket No. 1737. Amount claimed: \$9,020.00. Amount awarded: \$1,442.00. To the Estate of Green Holland, deceased, \$1,297.80; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$144.20.

DECISION No. 61(119)—C

Claim of Estate of Sarah O'Brien. General Docket No. 1741. Amount claimed: \$100,000.00. Amount awarded: \$15,491.00.

DECISION No. 61(120)—C

Claim of Estate of William Rupley. General Docket No. 1744. Amount claimed: \$45,900.00. Amount awarded: \$9,394.00.

DECISION No. 61(121)—C

Claim of William C. Cavitt. General Docket No. 1746. Amount claimed: \$93,000.00. Amount awarded: \$5,775.00. To the Estate of William C. Cavitt, deceased, \$4,620.00.

The following allowances of attorneys' fees: To Harold N. Marsh, 10 per cent of the award, \$577.50; to J. A. Eames, W. T. Scarborough, and George A. Nugent, jointly, 10 per cent of the award, \$577.50.

DECISION No. 61(122)—C

Claim of Samuel C. Jones. General Docket No. 1750. Amount claimed: \$65,530.00. Amount awarded: \$5,000.00. To the Estate of Samuel C. Jones, deceased, \$4,500.00; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$500.00.

DECISION No. 61(123)-C

Claim of Estate of Leander W. Peacock. General Docket No. 1753. Amount claimed: \$4,100.00. Amount awarded: \$805.00.

DECISION No. 61(164)-C

Claim of Estate of Frederick Metzger. General Docket No. 1759. Amount claimed: \$18,360.00. Amount awarded: \$160.00.

DECISION No. 61(124)-C

Claim of Estate of William Dewees. General Docket No. 1761. Amount claimed: \$24,600.00. Amount awarded: \$7,217.00.

DECISION No. 61(125)-C

Claim of William C. Adams. General Docket No. 1766. Amount claimed: \$50,925.00. Amount awarded: \$20,100.00. To the Estate of William C. Adams, deceased, \$17,085.00; to Hugh R. Robertson, Horace VanDeventer and George A. Nugent, jointly, 15 per cent of the award as attorneys' fees, \$3,015.00.

DECISION No. 61(126)-C

Claim of George W. Harper. General Docket No. 1770. Amount claimed: \$2,532.00. Amount awarded: \$334.00. To the Estates of the following-named children of the original claimant: Mary E. Harper Simpson, deceased, \$167.00; Rolly M. Harper, deceased, \$167.00.

DECISION No. 61(170)-C

Claim of Estate of William W. Perryman. General Docket No. 1776. Amount claimed: \$293,000.00. Amount awarded: \$35,000.00.

DECISION No. 61(127)-C

Claim of Estate of Joseph Knapick. General Docket No. 1787. Amount claimed: \$3,220.00. Amount awarded: \$441.00.

DECISION No. 61(128)-C

Claim of John Kindla. General Docket No. 1791. Amount claimed: \$3,020.00. Amount awarded: \$336.00. To the Estate of John Kindla, deceased, \$302.40; to the Estate of H. C. Duffy, deceased, 10 per cent of the award for his services as attorney, \$33.60.

DECISION No. 61(129)-C

Claim of John Martin. General Docket No. 1793. Amount claimed: \$171,330.00. Amount awarded: \$4,020.00. To the Estate of John Martin, deceased, \$3,618.00; to Harold N. Marsh, 10 per cent of the award, as fees, for his services as attorney, \$402.00.

DECISION No. 61(130)-C

Claim of Estate of Joseph L. Dugat. General Docket No. 1794. Amount claimed: \$137,710.00. Amount awarded: \$20,993.00.

DECISION No. 61(131)-C

Claim of C. E. Dugat as Guardian of Theophilus B. Dugat. General Docket No. 1795. Amount claimed: \$1,780.00. Amount awarded: \$486.00.

DECISION No. 61(132)-C

Claim of Estate of Michael O'Donnell. General Docket No. 1798. Amount claimed: \$6,360.00. Amount awarded: \$938.00.

DECISION No. 61(133)-C

Claim of Estate of Nancy M. Reed. General Docket No. 1800. Amount claimed: \$352,440.00. Amount awarded: \$68,621.00.

DECISION No. 61(134)-C

Claim of Estate of Robert M. Myers. General Docket No. 2366. Amount claimed: \$41,320.00. Amount awarded: \$6,400.00.

DECISION No. 61(135)-C

Claim of James A. Perkins. General Docket No. 2437. Amount claimed: \$13,710.00. Amount awarded: \$3,934.00. To the Estate of James A. Perkins, deceased, \$3,540.60; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$393.40.

DECISION No. 61(136)-C

Claim of Estate of Charles E. Dugat. General Docket No. 2471. Amount claimed: \$15,500.00. Amount awarded: \$1,993.00.

DECISION No. 61(137)-C

Claim of Estate of John Redus. General Docket No. 2472. Amount claimed: \$125,500.00. Amount awarded: \$12,000.00.

DECISION No. 61(138)-C

Claim of Estate of William P. Bennett. General Docket No. 2500. Amount claimed: \$57,100.00. Amount awarded: \$9,648.00.

DECISION No. 61(179)-C

Claim of John Kennedy. General Docket No. 2514. Amount claimed: \$13,485.00. Amount awarded: \$2,000.00. To the Estate of John Kennedy, deceased, \$1,700.00; to Harold N. Marsh, as attorney's fees, \$300.00.

DECISION No. 61(139)-C

Claim of Estate of Joseph Walker. General Docket No. 2532. Amount claimed: \$99,840.00. Amount awarded: \$11,816.00.

DECISION No. 61(140)-C

Claim of Jonathan A. Doak. General Docket No. 2566. Amount claimed: \$34,750.00. Amount awarded: \$8,753.00. To the Estate of Jonathan A. Doak, deceased, \$7,602.40; to O. M. Fitzhugh, as fees for his services as attorney, \$1,150.60.

DECISION No. 61(141)-C

Claim of W. N. Staples. General Docket No. 2567. Amount claimed: \$137,600.00. Amount awarded: \$10,000.00. To the Estate of W. N. Staples, deceased, \$8,000.00; to Harold N. Marsh, 20 per cent of the award, as attorneys' fees for services of himself and associates, \$2,000.00.

DECISION No. 61(142)-C

Claim of George F. Hindes. General Docket No. 2569. Amount claimed: \$35,200.00. Amount awarded: \$5,211.00. To the Estate of George F. Hindes, deceased, \$4,689.90; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$521.10.

DECISION No. 61(143)-C

Claim of George W. Daugherty. General Docket No. 2570. Amount claimed: \$10,710.00. Amount awarded: \$3,600.00. To the Estate of George W. Daugherty, deceased, \$3,240.00; to Harold N. Marsh, 10 per cent of the award, as attorneys' fees for services of himself and associates, \$360.00.

DECISION No. 61(144)-C

Claim of J. H. Polley. General Docket No. 2576. Amount claimed: \$168,620.00. Amount awarded: \$22,000.00. To the Estate of J. H. Polley, deceased, \$19,500.00.

The following allowances of attorneys' fees: To George A. Nugent and Horace VanDeventer, jointly, \$1,250.00; to N. H. Robbins, \$1,250.00.

DECISION No. 61(145)-C

Claim of Estate of Nancy K. Malone. General Docket No. 2580. Amount claimed: \$45,270.00. Amount awarded: \$11,809.00.

DECISION No. 61(146)-C

Claim of Estate of William C. Cole. General Docket No. 2581. Amount claimed: \$14,200.00. Amount awarded: \$1,000.00.

DECISION No. 61(182)-C

Claim of Estate of William Harmon. General Docket No. 2585. Amount claimed: \$68,950.00. Amount awarded: \$11,025.00.

DECISION No. 61(173)-C

Claim of Estate of Nathaniel H. Walker. General Docket No. 2588. Amount claimed: \$100,970.00. Amount awarded: \$12,103.00.

DECISION No. 61(147)-C

Claim of John Linney. General Docket No. 2591. Amount claimed: \$113,360.00. Amount awarded: \$17,395.00. To the Estate of John Linney, deceased, \$15,655.50; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$1,739.50.

DECISION No. 61(148)-C

Claim of Estate of Ann Fox. General Docket No. 2759. Amount claimed: \$33,650.00. Amount awarded: \$7,420.00.

DECISION No. 61(149)-C

Claim of Estate of John Q. Daugherty. General Docket No. 3103. Amount claimed: \$930.00. Amount awarded: \$795.00.

DECISION No. 61(150)-C

Claim of Estate of James W. Drury. General Docket No. 3107. Amount claimed: \$98,000.00. Amount awarded: \$24,017.00.

DECISION No. 61(151)-C

Claim of Edwin L. Downs. General Docket No. 3108. Amount claimed: \$200.00. Amount awarded: \$200.00. To the Estate of Edwin L. Downs, deceased, \$180.00; to Horace VanDeventer, 10 per cent of the award, as attorney's fees, \$20.00.

DECISION No. 61(152)-C

Claim of Estate of William Dillard. General Docket No. 3112. Amount claimed: \$41,500.00. Amount awarded: \$9,336.00.

DECISION No. 61(153)-C

Claim of Harrison M. Daugherty and William C. Daugherty. General Docket No. 3113. Amount claimed: \$154,000.00. Amount awarded: \$42,750.00. To the Estate of Harrison M. Daugherty, deceased, \$21,375.00; to the Estate of William C. Daugherty, deceased, \$21,375.00.

DECISION No. 61(154)-C

Claim of G. P. Hodges or Estate. General Docket No. 3235. Amount claimed: \$3,120.00. Amount awarded: \$2,320.00. To the Estate of G. P. Hodges, deceased, \$2,088.00; to Harold N. Marsh, 10 per cent of the award, as fees for his services as attorney, \$232.00.

SERIES C AND D: OTHER REVIEWS; "SPECIAL" CLAIMS

SERIES C AND D: OTHER REVIEWS; "SPECIAL" CLAIMS

DECISION No. 38-B

DECISION No. 47-D

General Docket No. 1. Special Docket No. 1846. Claimant: Will and Baumer Candle Company. Amount claimed: \$7,981.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of Section 3 (a) (5) and Section 4 of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions in the amount of 15,962 pesos, and was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. The claim was presented by memorial to the General Claim Commission solely for determination of the question of jurisdiction.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, held that items of the claim totalling 9,812 pesos constituted a general claim but that no award should be made with respect thereto. The balance of the claim, in the amount of 6,150 pesos, was classified by the American Commissioner as a special claim.

The following comprises the contents of a document described as a "Memorial and Petition for Review" filed on behalf of the claimant with this Commission on August 11, 1944:

"1. The claimant submits its special feature on the basis of the material filed in the claim of the Singer Sewing Machine Company, Docket No. 2183 (part).

"2. The claimant submits that it has suffered manifest injustice as to the general feature and prays that a Petition for Review be granted on the basis of the material filed in the claim of the Singer Sewing Machine Company, Docket No. 2183 (part)."

It is not clear from this document whether or not the claimant objects to the classification of the various items of claim by the American Commissioner as noted above, but presumably such is the case.

The several items of claim have reference to certain issues of paper currency which the claimant states it was obliged to accept during the years 1914-1916, in payment of goods sold by its branch office in Mexico City. The bills in question are described by the claimant as follows:

	Pesos
1. Constitutionalist Government of Mexico, Monclova, Coah., May 28, 1913.....	130.00
2. General Treasury of State of Chihuahua, Chihuahua, December 10, 1913	5,710.00
3. Provisional Obligation of Federal Public Treasury, Mexico, July 25, 1914	6,062.00
4. Provisional Government of Mexico, Mexico, September 28, 1914	100.00
5. Provisional Government of Mexico, Mexico, September 28, 1914—Revalidated by decree of December 17, 1914.....	800.00
6. Provisional Government of Mexico, Mexico, October 20, 1914..	60.00
7. Provisional Government of Mexico, Mexico, October 20, 1914—Revalidated by decree of December 17, 1914.....	2,644.00

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8. Provisional Government of Mexico, Veracruz, December 1, 1914	Pesos 135.00
9. State of Chihuahua, Military Decree of February 10, 1914, Chihuahua, Chih., January 1915.....	310.00
10. Provisional Government of Mexico, Veracruz, February 5, 1915	11.00
Total	15,962.00

The only information in the record regarding the circumstances under which the claimant came into possession of the bills is that furnished in an affidavit of Albert J. Will, President of the claimant company, dated October 13, 1924, wherein it is stated that:

"The facts and circumstances out of which the loss occurred and from which the claim arises are: During the years 1914, 1915 and 1916 certain revolutionary bills were put in forced circulation and the Mexican Branch of this Company was compelled to accept them in payment for candles and other merchandise sold. This continued until by the end of the year 1916 our Mexican Branch found itself in possession of these worthless bills to the extent of fifteen thousand nine hundred and sixty-two (15,962) pesos, a list of which was filed in duplicate with the Secretary of State of the United States under date of June 10, 1924, along with other details of claim."

The reason for the classification made of these items by the American Commissioner, as noted above, is set out in his appraisal as follows:

"I hold that Items I, II and IX are within the jurisdiction of the Special Claims Commission as the issuance of the currency embraced in these items was in each instance essentially a military measure by revolutionary factions operating in northern Mexico during the years 1913, 1914 and 1915. These items amount to the total sum of 6,150 pesos or \$3,075.00, United States currency. The remaining items cover currency issued by the central Government in its executive capacity and cannot be said to be derived from an 'act of forces'. So the remaining items, totalling \$4,906, constitute a General Claim."

We see no error in Commissioner Underwood's aforesaid classification of the claim. Apart, however, from the question as to the correctness of such classification, we find that no liability on the part of the Mexican Government exists whether this claim is considered to fall within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923, or that of the General Claims Commission established under the Convention of September 8, 1923.

The record fails to disclose whether or not provision was made for the exchange or redemption of the bills in question or whether they were presented for that purpose. No evidence is furnished bearing upon the cost or value of the goods sold by the claimant in exchange for which the currency came into its possession. In these circumstances a proper basis is not established upon which it would be possible to determine the extent of claimant's loss.

As pointed out in the Commission's opinion in the claim of the

Singer Sewing Machine Company, Docket No. 2183 (part), the Commission is aware of no authority under international law imposing liability upon a government for depreciating its currency.

In the opinion of the Commission the claimant has failed to establish any essential error in the previous appraisal made of this claim. The petition for review is accordingly denied.

Since for reasons stated above, the record contains no satisfactory evidence to establish the extent of any loss sustained by the claimant, the special claim must be disallowed.

ORDER No. 73

General Docket No. 20. Claimant: Otis Steel Company.

An appraisal having been made of this claim by a Commissioner designated by the United States within the meaning of Section 4 (a) of the Settlement of Mexican Claims Act of 1942 (56 Stat. 1058; 22 U.S.C., Sup. 11, 661 (c)), the claimant or his attorney having been notified by registered mail as provided in Section 4 (b) of the same Act of the appraisal so made, and the claimant having failed to notify this Commission in writing that a petition for review will be filed as provided in subsection (c) of Section 4 of the same Act, Award No. 1 was entered on the basis of such appraisal on July 29, 1943, pursuant to Section 4 (b) of the Act aforementioned, and certified to the Secretary of the same day, in form as follows:

To Otis Steel Company the principal sum of \$6,084.05 with interest, as provided in Section 7 of the Act aforementioned, from December 4, 1914.

The record shows that the Memorial in this claim was filed by the Agency of the United States with the General Claims Commission on May 11, 1925, and that subsequently and on May 21, 1927, the claimant informed the Agency that the entire principal amount of the claim had been paid by the National Railways of Mexico and that claimant desired if possible to reduce its claim to one for interest, i. e., from December 4, 1914, to date of payment (May 11, 1927).

The facts as to the aforementioned payment of the principal amount of the claim and as to the reduction by claimant of the claim to one for interest for the period above stated are contained in a letter dated August 13, 1943, from claimant's attorneys, Squire, Sanders and Dempsey, Esquires, Union Commerce Building, Cleveland, Ohio, to the Commissioner of Accounts, Bureau of Accounts, Fiscal Service, Treasury Department, Washington, D.C.

In the circumstances above stated, it is hereby ORDERED

1. That Award No. 1 be and the same is hereby amended *nunc pro tunc* to read as follows:

To Otis Steel Company, interest on \$6,084.05 at the rate provided in Section 7 of the Settlement of Mexican Claims Act of 1942, from December 4, 1914, to May 11, 1927, payment to be subject to the provisions of sub-section (d) (3) of Section 8 of said Act.

2. That the original hereof be transmitted to the Secretary of the Treasury in connection with said Award No. 1.

DECISION No. 5

General Docket No. 26 (part). Special Docket No. 99 (part). Claimant: John E. Carnahan and Lizzette G. Robinson, Rose Robinson Lewis, Beulah Robinson Lewis, and E. L. Robinson in their own right and as executors of the Estate of John S. Robinson, Deceased. Amount claimed: \$325.00. Amount awarded: \$325.00.

This claim, in the amount of \$325.00, is for the loss of four horses, one saddle and two steers, all of which were requisitioned by military authorities stationed at Tuxtepec, in April and June, 1914, from the ranch known as "San Bartolo," located in the District of Tuxtepec, State of Oaxaca, Mexico.

This claim is part of a larger one amounting to \$99,215.48. In the appraisal by Commissioner Underwood he held that \$98,890.48 was to be classified as a General claim and that on this portion of the claim there should be allowed the sum of \$28,022.50. Claimants were duly notified of this appraisal, filed their acceptance, and this Commission has certified an award to the Treasury Department, in accordance with the provisions of the Settlement of Mexican Claims Act of 1942, for the amount of the appraisal.

At the time of the taking of said property the ranch and personalty thereon belonged to John E. Carnahan and John S. Robinson in equal shares. Prior to filing of the memorial the latter had died and his portion of the claim was presented in behalf of his wife, Lizzette G. Robinson, his daughters, Rose Robinson Lewis and Beulah Robinson Lewis, all of whom, together with E. L. Robinson, had been appointed executors and co-trustees under the will of said John S. Robinson. Since the memorial was filed John E. Carnahan and Lizzette G. Robinson have also died. The latter left a will devising the remainder of her estate, including her interest in this claim, to her daughters, the said Rose Robinson Lewis and Beulah Robinson Lewis, naming them executrices of her will, which was duly probated.

On November 29, 1924, Howard W. Smith was appointed trustee of the Estate of John S. Robinson, deceased, as successor to Lizzette G. Robinson, whose death had occurred on November 13, 1924.

Subsequent to his appointment as executor and trustee E. L. Robinson resigned and was relieved of his duties in each of said capacities.

The ownership of the property taken and the American citizenship of all persons having an interest in this claim at all times pertinent have been established. The identity of the authorities whose acts resulted in the losses to claimants has also been established. They fall within the forces described in Article III of the Special Claims Convention of September 10, 1923, between the United States and Mexico.

The evidence establishes the taking of the property by orders of the military authorities directed to the manager of the ranch. An order of April 30, 1914, demands the delivery of two steers or cows. and one of June 26, 1914, demands delivery of four horses, "good for a long journey" and one saddle.

In the memorial and the evidence the two steers were valued

at \$65.00 and the four horses and saddle at \$260.00. These values are reasonable and just.

An award is accordingly made to John E. Carnahan, or his estate, Rose Robinson Lewis and Beulah Robinson Lewis, in their own right and also as executrices and trustees of the estate of John S. Robinson, and Howard W. Smith, as trustee of the estate of John S. Robinson, as their interests may appear, in the sum of \$325.00 without interest.

DECISION No. 62-C

DECISION No. 130-E

General Docket Nos. 49 and 3457. Agrarian Docket No. 175. AMC Docket No. 46. Claimant: Land Finance Company. Amount claimed: \$1,718,286.92. Amount awarded: \$143,708.74.

The claimant herein asks awards in four separate claims for losses resulting from and incidental to the expropriation of an area of land alleged to have been owned by the corporation, by reason of a number of expropriation decrees hereinafter specified. The land was known as Hacienda Bayone y Nieblas located in the States of Sinaloa and Nayarit, Mexico. The claimant asked for awards in the amount of \$316,665.97 in the two claims previously filed with the General Claims Commission, \$932,787.81 in the claim filed with the Agrarian Claims Commission, and \$468,833.14 in a new claim filed with this Commission.

An appraisal was made by the American Commissioner as provided by the Convention of 1934 of the two claims filed with the General Claims Commission and this Commission has granted a review of said appraisals pursuant to Section 4 of the Settlement of Mexican Claims Act of 1942. Likewise, this Commission has granted a review of the appraisal made by the Agrarian Claims Commission. In addition to the aforesaid three claims, claimant, as above indicated, has filed an additional claim with this Commission.

Since all of said claims pertain to various expropriations from the same tract of land, this Commission, in accordance with its usual procedure, has combined the four separate claims and considered them together herein.

Land Finance Company was incorporated under and by virtue of the laws of the State of South Dakota, and its American nationality is established.

The claimant has filed as evidence eleven documents of purchase by which it acquired various undivided fractional interests in this hacienda which contained approximately 70,570 hectares of land. It is conceded that the total undivided interest which the claimant had in the property was 80.84% of the total.

Before passing upon the claim for the lands shown actually to have been affected by expropriation decrees at a time within our jurisdiction we shall consider other items of claim submitted by the claimant.

First is a claim for damages resulting from the loss of use of certain property taken by a Governor's Decree and later returned to claimant by reason of its exclusion from the subsequent Presidential Decree. The evidence as to such rental value is unsatisfactory. Claimant alleged such loss to be \$9,420.33 in the claims

filed with the General Claims Commission. In the claim before the Agrarian Claims Commission such losses were said to be \$7,320.00. The use to which this land was put is not disclosed, nor is there definite proof as to the length of time that the property was kept from claimants. This item lacks supporting evidence and must therefore be disallowed. Claimant has also asked for depreciation of certain buildings in the amount of \$6,000.00. It is alleged that because of the expropriation of the land, the buildings could not be used by claimant as advantageously as before. The evidence submitted to support this item of claim is likewise vague and uncertain and the same is therefore likewise disallowed.

Other items of claim submitted by the claimant herein cover alleged expropriations for which no evidence whatever is furnished either as the extent of such expropriations or the dates when they occurred. Obviously, no award can be given for such items. The claimant has also asked the sum of \$27,890.36 for taxes paid after 1925. The payment of taxes is a necessary expense in connection with the ownership of property and is not a subject for which an award may be made unless there are some special circumstances justifying such an award. No such circumstances have been alleged or proven in connection with any of these claims. The claimant has also asked for \$4,000.00 as an item of claim covering alleged attorneys fees. There is no evidence as to what services the attorneys fees may have covered and no theory has been advanced by the claimant to justify an award therefor.

The claimant further claims a loss arising from the taking of property for the Village of La Concha alleging that such taking caused an additional loss in the amount of \$20,000 representing the value of a townsite alleged to have been laid out by the claimant. No evidence has been submitted that such townsite was ever surveyed or platted, nor is there any evidence that such expropriation actually occurred. This item is therefore disallowed.

In the new claim before this Commission it is alleged that 1,759 hectares of land were expropriated for the Village of Copales. The Presidential Decree expropriating this property being dated April 20, 1938, such item of claim does not come within the jurisdiction of this Commission as defined in section 3(a) (2) or (3) of the Settlement of Mexican Claims Act of 1942, it not having previously been filed with the Agrarian Claims Commission. This item of claim cannot therefore be allowed.

The claimant also asks an award for the loss sustained by reason of the taking of 18,732 hectares of land as surplus land. This item of claim was filed both with the Agrarian Claims Commission and with this Commission and was referred to in the claim filed with the General Claims Commission. In the affidavit of claim filed with the Agrarian Claims Commission it is stated that "prior and subsequent to August 30, 1927" claimant had been dispossessed of such 18,732 hectares. However, in a statement filed with the General Claims Commission it was alleged "that on or about October 1, 1925" Mexico had dispossessed the claimant of such land. In the claim before this Commission it

is contended for the first time that claimant was dispossessed in 1925 "but, was never able to get acknowledgment by the Government until June 30, 1943." From a careful consideration of all the available evidence we are unable to conclude that this item of claim for the loss of 18,732 hectares was the subject matter of any expropriation for which we may properly make compensation. The deeds by which the claimant claims to derive title thereto contain no clear statement as to its boundaries. Moreover, if there were a loss to the claimant, it occurred at a time prior to the jurisdiction of this Commission or of the Agrarian Claims Commission.

Passing to the question as to value of the lands actually expropriated, the evidence submitted by claimant is not very satisfactory. Claimant has filed a number of affidavits alleging the property to be worth \$40.00 per acre. This value is predicated upon the fact that claimant had made a few contracts of sale of portions of this property for that amount. These sales were made many years prior to any expropriation decree and afford little basis for evaluating the said lands. While the claimant has stated that some rentals have been received from the property, it appears from communications of the local manager for claimant that he has been unable to collect enough to pay his salary in full. It is conceded that no income has been derived from this property for the benefit of the corporation since 1911. While it has been alleged that much of the property was suitable for cultivation, it is also conceded that a good deal of the property was almost worthless. Weighing all the evidence in the record and considering the evidence filed in claims pertaining to property of like character in that general vicinity and also information obtained upon a personal inspection, the Commission determines that a fair and just valuation of the land would be as follows: 150 pesos for humedad land, 70 pesos for temporal land and 15 pesos for the hilly or pasture land.

Applying the aforesaid schedule of values to the following expropriation decrees of which satisfactory evidence has been submitted, we find claimant to be entitled to an award for the lands indicated to be affected thereby, as follows:

General Claims Commission, General Dockets Nos. 49 and 3457

La Concepcion, 10/25/1920. 1775 hectares:

All seasonal @ 70 pesos.....	pesos 122,850
Exchange 2.02	\$60,816.83
80.84%	\$49,164.33

La Bayona, 3/1/28. 493.8 hectares:

160 seasonal @ 70 pesos.....	pesos 11,200
333.8 pasture @ 15 pesos	pesos 5,007
	16,207
Exchange 2.10	\$7,717.62

El Tigre, 3/1/28. 540 hectares:

60 humedad @ 150 pesos	pesos 9,000
480 seasonal @ 70 pesos.....	pesos 33,600

	42,600
Exchange 2.10	\$20,285.71

80.84% of \$28,003.33 (\$7,717.62 and \$20,285.71)..... 22,637.89

La Loma, 2/17/27. 790 hectares:

200 humedad @ 150 pesos pesos 30,000
 590 seasonal @ 70 pesos pesos 41,300

Exchange 2.13 \$33,474.18
 80.84% \$27,060.53

TOTAL ON GENERAL DOCKETS Nos. 49 and 3457... \$98,862.75

Agrarian Claims, Docket No. 175

Pajarito, 2/10/37. 247 hectares:

132.8 humedad @ 150 pesos pesos 19,920
 114.2 pasture @ 15 pesos pesos 1,713

Exchange 3.55 \$6,093.80
 80.84% \$ 4,926.23

La Bayona Amp. 5/3/37. 472 hectares:

All seasonal @ 70 pesos pesos 33,040

Exchange 3.55 \$9,307.04
 80.84% 7,523.81

El Tigre Amp. 2/24/27. 474 hectares:

All seasonal @ 70 pesos pesos 29,680

Exchange 3.55 \$8,360.56
 80.84% 6,758.68

Tecuallila, 4/20/38. 648 hectares:

288 seasonal @ 70 pesos pesos 20,160
 360 pasture @ 15 pesos pesos 5,400

Exchange 3.95 \$6,470.88
 80.84% 5,231.06

El Aguijije, 9/28/38. 1723 hectares:

584 seasonal @ 70 pesos pesos 40,880

1139 pasture @ 15 pesos pesos 17,085

Exchange 4.90 \$11,829.59
 80.84% 9,563.04

TOTAL ON AGRARIAN DOCKET No. 175..... \$34,002.82

AMC Docket No. 46

Las Pilas, 9/22/39. Governor's Decree and Possession. 2,165 hectares:

72 humedad @ 150 pesos pesos 10,800

440 seasonal @ 70 pesos pesos 30,800

1653 pasture @ 15 pesos pesos 24,795

Exchange 4.95 \$13,413.13

80.84% \$10,843.17

TOTAL AMC DOCKET No. 46 \$10,843.17

Recapitulation:

General Claims \$98,862.75

Agrarian Claims 34,002.82

AMC Claims 10,843.17

\$143,708.74

It has been the claimant's contention that the losses complained of should be valued in dollars since the affidavits as to value which have been submitted express an opinion of values in dollars. It is further contended that since there is no evidence on file other than that submitted by the claimant, this Commission is bound to follow such estimates of damage. This Commission has repeatedly held that valuations are logically fixed in terms of the currency in use where the property is located. Therefore, in determining such values it is necessary for this Commission to consider them

in terms of pesos and then to convert them into dollars at the rate of exchange existing at the date when the losses accrued. Fluctuations in the rate of exchange are not guaranteed by any country and is an element of risk which any investor in the country must assume.

The claimant herein, the Land Finance Company, is accordingly awarded the principal sum of \$143,708.74 with interest thereon from dates of expropriations as provided in section 7 of the Act.

DECISION No. 18-D

General Docket No. 51. Special Docket No. 999. Claimants: Arbuckle Brothers. Amount claimed: \$2,000,000.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

It was filed by memorandum notice with both the General and Special Claims Commissions in the amount of \$2,000,000, and was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a *general* claim.

In a memorial covering the entire claim, which was filed with the General Claims Commission on March 30, 1936 in the amount of \$3,028,536.74, the claimant government requested that Commission to find that the claim is within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 classified the entire claim as *special*, and the claimant has indicated no objection to that classification.

The claimants, American nationals, are members of the American partnership firm of Arbuckle Brothers which for many years preceding the events underlying this claim was engaged in the buying and selling of coffee, with headquarters in New York City. A principal source of the firm's supply of that product was the State of Veracruz, Mexico. To insure an adequate supply of coffee, it was the practice of the firm to advance money to Mexican coffee growers under so-called *avio* contracts, for the purpose of financing the production of the crop. Under these contracts the recipients of the advances undertook to make repayment in the form of coffee to be produced by them and delivered to the firm at prices prevailing at the time of delivery. The growers reserved, however, the privilege of making repayment in cash. In a few instances it appears that the obligation of the grower was secured by a recorded mortgage upon his land in favor of the firm.

The amount for which claim is made appears to represent the total sum of such advances made by the firm prior to the year 1915, together with interest thereon at 6 percent. It is alleged in that connection that during the years 1915 to 1920, the areas where the coffee was produced were overrun by revolutionary and federal forces, by insurrectionists and various armed bands which expropriated beasts of burden belonging to the coffee growers, confiscated portions of coffee crops then being grown or ready

for transportation, caused the laborers to leave the plantations and obliged the owners thereof to abandon their properties. These circumstances, it is said, so impoverished the persons to whom advances had been made as to render it wholly impossible for them to make any repayment to the claimants either in coffee or otherwise.

Allegations of the claimants and the evidence which has been presented confirm the classification of the claim by the agents of the two governments and by the American Commissioner as a special claim.

Claimants contend that under the so-called *avio* contracts they acquired vested property rights in the coffee crops to be produced in the future and that for the destruction of those rights under the circumstances disclosed by the record they are entitled to indemnity under the provisions of the Special Claims Convention of September 10, 1923. In support of those contentions reference is made to various provisions of the Civil Code of the State of Veracruz relating to the nature of *avio* contracts and to the construction thereof by a practicing attorney of Veracruz.

It is also urged on behalf of the claimants that prior to the year 1915 they had been receiving without interruption ever-increasing coffee crops from the persons to whom they had advanced money; that the coffee growing industry in the State of Veracruz was at that time in a flourishing condition; and that had it not been for the revolutionary disturbances the planters would have been able within a few years to repay claimants in full.

Our view of the provisions of the Civil Code of the State of Veracruz, relating to the nature and effect of so-called *avio* contracts, is that they created a relationship of debtor and creditor. The contracts between the claimants and coffee growers merely evidenced an indebtedness which the debtor might liquidate either by the delivery of coffee or by the payment of cash.

Claimants endeavor to show that, based upon the coffee crop produced during the season of 1912-13, the total value of the crops which could have been produced during the five-year period 1915-20, would have amounted to \$1,747,860.01. United States currency. The amount of claimant's advances to the coffee growers (3,048,056.18 pesos) is roughly 87 percent of the latter-mentioned amount. Of necessity the amount or value of any crop of coffee produced subsequent to the year 1914 would have had to depend upon numerous and varied contingencies. Likewise the extent of the repayments which the growers might have been able to make to the claimants in those years would have been subject to the same uncertainties. These uncertainties would have continued to be present notwithstanding any effect which might have been given to the aforesaid *avio* contracts.

Claimants doubtless sustained losses as a consequence of disturbed conditions. However, not all classes of loss are compensable under the provisions of the Special Claims Convention of September 10, 1923. A casual connection must be shown between the acts of one or more of the forces specified in Article III thereof and the loss for which indemnity is sought. The evidence adduced falls far short of establishing such connection.

The Mexican Government did not by the terms of the Special Claims Convention assume liability for indirect losses.

Upon the entire record the Commission holds that the damages are too speculative and contingent to constitute a valid basis for an award and that the claim must be disallowed.

DECISION No. 43-D

General Docket No. 61 (part). Special Dockets Nos. 161 and 2615. Claimant: The Motzorongo Company. Amount claimed: \$30,327.16. Award: disallowed.

This claim in the amount of \$30,327.16, made up of two items, \$12,005.36 and \$18,321.80, respectively, is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. The entire claim in the amount of \$57,347.65 was filed by memorandum notice with both the General and Special Claims Commissions and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a general claim.

The claim was presented by memorial to the General Claims Commission for determination of the sole question of jurisdiction. The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that two of the items of claim totalling \$27,020.49 fell within the jurisdiction of the General Claims Commission and were without merit. The other two items of claim totalling \$30,327.16 were considered by the American Commissioner to constitute a special claim. No objection having been made by the claimant to the appraisal of the American Commissioner, this Commission on August 11, 1944, entered an award on the basis thereof conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. There accordingly remain for final disposition the two items of claim classified by the American Commissioner as special and totalling \$30,327.16.

The claimant, an American national, at all times pertinent to the present claim was engaged in the operation of a sugar plantation and mill at Motzorongo, State of Veracruz, Mexico. In that connection it maintained on deposit in various banking institutions in Mexico funds for the payment of its employees and other business expenses.

It is alleged in connection with the first item of claim in the amount of \$12,005.36, that during the month of March 1915 the claimant was compelled to accept certain paper currency of a value not in excess of 8,622.78 gold pesos in full liquidation of the amount of 32,633.51 pesos which it had on deposit with the Bank of Montreal in Mexico City. It is said that the value of the deposit was depreciated by reason of the issuance by Venustiano Carranza as First Chief of the Constitutionalist Army of large quantities of paper currency of a depreciated value which was made of forced circulation as legal tender.

With respect to the second item of claim in the amount of \$18,321.80, it is alleged that the claimant was compelled to accept certain paper currency of a value not in excess of 10,940.78 gold pesos in full liquidation of the amount of 47,584.39 pesos which

it had on deposit prior to October 31, 1914, with the mercantile firm of Ortiz Sainz y Cia. in Mexico City. Allegations with reference to this loss are the same as those upon which the first item of claim is based.

No records are presented of the transactions in question, and there is no evidence to support the allegations as to the loss suffered by claimant as a result of the circumstances mentioned above.

Certain phases of losses resulting from depreciated currencies are treated in the claim of Scott and Bowne, General Docket No. 2378, Decision No. 1, Series B, of this Commission. Therein we stated that:

"It is elementary law that States are not responsible for losses caused by currency fluctuation."

There appears to be nothing in the record in the instant claim which would remove the claim from that principle.

For reasons indicated above, a valid basis of claim is not established with respect to either item of the claim and the Commission accordingly decides that the claim must be disallowed.

DECISION No. 47-C

General Docket No. 86. Claimant: Thomas John Noakes (deceased). Amount claimed: \$48,284.98. Amount awarded: \$25,000.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 58, dated July 27, 1945).

The claim, amounting to \$48,284.98 was predicated upon the loss by pillage and arson on March 26, 1875, of the store owned and operated by Thomas John Noakes during a raid conducted by Mexicans and known as the "Nuecestown-Corpus Christi Raid of 1875." The claim was filed in his name although he died shortly after the raid and long before the memorial was filed. The evidence shows that the claim has been continuously American-owned since the loss accrued.

Some days prior to the raid itself, various warnings were issued by the United States Commercial Agent and military men to the military commanders on the border that one Juan N. Cortina had sent orders in writing to organize a raid. The official positions held by Cortina in Mexico and some of his depredations in the United States are described in this Commission's General Memorandum Opinion in the Texas Cattle Claims, dated December 30, 1944. The warnings, some of which came from official representatives of the United States in Mexico, told of the approximate size of the raiding party, its place of assembly, and its approximate place of crossing the Rio Grande River. Events proved the accuracy of such predictions. The raiding party split into four groups each consisting of at least fifty armed and mounted men. The group responsible for the loss for which this claim was made engaged in a wide sweep throughout the country. Seizing the

persons of several people who might possibly give notice of the raid to the Texas authorities, this group robbed several stores as well as individual residents and travelers. There were many witnesses of the attack on the Noakes store. Noakes attempted resistance and shot one of the raiders. Noakes escaped but his store was robbed and burned.

There is a considerable amount of evidence filed with this claim, as well as that filed with other claims originating from the same raid, which indicates that the raiders were controlled by military men. The leaders spoke of orders being received from their chief in Mexico. Eventually the raiders returned to Mexico, but not before aroused Texans were pursuing and attacking the raiders, as a result of which at least one Texan was killed. The Mexican foreign office furnished information that the civil authorities along the border in Mexico knew of the raid; that they had reported that Mexicans had loot that came from the pillage and burning of a store or stores in Texas, and that ten of the raiders were arrested by the authorities.

Mexican officials subsequently reported to the American Embassy that the military authorities had taken custody of the prisoners and had removed them to the interior. Texans charged that this was done to prevent anyone from Texas appearing as a witness against the prisoners.

The gathering of the raiders seems to have been a matter of common knowledge, the fact of such gathering having been reported prior to the raid. The planning of the raid and arrangement for the meeting place apparently took place in Mexico. The military took charge of the ten members of the raiding party after their arrest by the civil authorities, yet apparently no punishment was meted out to such raiders. In the aforesaid General Memorandum Opinion it is stated that "it seems clear that the raids which took place during the period in question were made possible by the conduct of the Mexican Government" (p. 18). The "period in question" includes the year when this claim arose. It seems clear that Mexico was liable for the damages resulting from this raid.

Commissioner Underwood's appraisal in which he held that claimant is entitled to no award contained the following:

"It is alleged that when the raiders returned to Mexico ten of the men were arrested but were removed to Monterrey by order of the military Commander . . . However, there is no showing that any of the ten men arrested were among those who destroyed Noakes' store; there is no evidence that Noakes complained to the Mexican authorities and there is no evidence that extradition was sought. Consequently there is no proof of any specific delinquency on the part of the Mexican authorities as regards the persons who actually raided and destroyed the store."

This Commission does not agree with Commissioner Underwood in his denial of an award to claimant on the foregoing premise. The organization of the raid by Mexican officers and the failure of the Mexican authorities to punish the raiders clearly creates liability on the part of Mexico. With respect to the Commis-

sioner's statement concerning a demand for extradition, it may be pointed out that the extradition treaty of December 11, 1861 between the United States and Mexico, 18 Stat. (part 2) 506, which was in effect at that time, specifically provided that "Neither of the contracting parties shall be bound to deliver up its own citizens." The futility of instituting extradition proceedings is thus apparent.

The list of property destroyed consisted of a two-story frame store building with residence attached, and some other buildings, personal property of Noakes such as household goods, and a stock of merchandise. A sum of \$9,580 is claimed for the buildings and a sum of \$24,000 for the stock. The list, made by Noakes, while entitled to some weight, was not verified or sufficiently detailed, and some items such as the claim of \$5,000 loss for "valuable documents and papers" are not definite enough to justify an award therefor. The Commission is mindful of the fact that Noakes died within two years after the raid and that this might explain the failure to verify the claim. At the time of the raid his children were too young to make the necessary sworn statements. His widow died before the memorial was filed. The proof regarding the exact amount of damages sustained by claimant is somewhat meager. The record shows, however, that Noakes had a rather complete establishment and a large stock of merchandise and the Commission concludes that the sum of \$25,000 is a fair and reasonable estimate of the loss sustained.

An award is accordingly made in favor of the estate of Thomas John Noakes, deceased, in the sum of \$25,000, with interest thereon as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from March 26, 1875.

DECISION No. 15-C

General Docket No. 93. Claimant: Sam Davis Mathews, Thomas W. Wilkinson, et al. Amount claimed: \$57,166.65. Amount awarded: \$35,552.65.

This claim, in the sum of \$57,166.65, with interest, is for losses which it is alleged resulted from a denial of justice to claimants in their efforts to obtain redress for wrongful occupation of mines by Mexican citizens, and for ore abstracted from, and damage done to, the mines by the wrongful occupants.

The claim was originally filed in the name of Sam Davis Mathews, Thomas W. Wilkinson, J. J. McGrath and Albert Iankes, on March 23, 1925, and was for \$125,149.97.

Prior to the filing of the Memorial in 1936, Iankes had died and no one had come forward to assert a claim for the interest which had belonged to him, and McGrath had transferred to Mathews all the interest which he had owned in the mines and in any claims which had enured to him. Hence the Memorial asserted claims on behalf of Mathews and Wilkinson only. The amount asked for the former was \$38,666.65, and for the latter \$18,500.00.

Gorgonio Flores, a Mexican citizen, was the owner of three mines situated near Concepción del Oro, Municipality of San Pedro de Ocampo, State of Zacatecas, Mexico, titles to which were

duly recorded in the Public Registry of Property of the Town of Mazapil.

On February 9, 1916, Flores leased by formal instrument two of the mines to McGrath, who shortly thereafter formed a partnership with Mathews for the exploitation of the mines, each having an equal interest. Thereafter McGrath transferred one-half of his interest to Iankes and a new partnership was formed in which Mathews owned one-half and McGrath and Iankes each owned one-fourth. The agreement provided that Mathews should defray the expenses incident to the development of the mines.

In March, 1916, Mathews and Iankes went to the mines prepared to begin work, but found that two brothers named López and their half brother Méndez had taken illegal possession of the mines, were taking and shipping the ores, and refused to relinquish possession. This was an open violation of Mexican mining laws, especially Articles 102 and 103 which denounce such taking of ores in the absence of title to the mines, and provide severe penalties of fines and imprisonment for violation of their provisions.

Mathews and Iankes spent considerable time and effort endeavoring to obtain possession of their mines without resort to legal proceedings, incurring considerable expenses in these efforts, but without success.

In order to raise additional funds, on June 21, 1917, Mathews sold two-twelfths and Iankes sold one-twelfth interest to Thomas W. Wilkinson for the sum of \$6,000.00. Wilkinson did not enter into the partnership, but merely acquired a one-quarter interest in the rights, privileges and expected profits incident to the contract of lease and the subsequent partnership agreements.

On August 14, 1917, Iankes and three employees again went to the mines prepared to begin work, but were prevented from doing so by the trespassers. In the meantime the partnership had been given permission by Flores to exploit a third mine, known as Demacias de la Bruja, which also belonged to him, and which adjoined the two mines included in the lease to McGrath. A formal lease on the La Bruja mine was not executed until February 24, 1919.

On August 18, 1917, Iankes filed with the Municipal Judge of San Pedro de Ocampo a complaint of the trespass and requested the court to place him in possession of the mines. This petition obtained no action by the court.

If the relief prayed for had been granted by the court the complainant would have been protected against the damage inflicted by the acts of trespass of which he complained. The court should have at least undertaken to determine the merits of the claim for possession. Its failure to take this action resulted in a denial of justice since it deprived claimants and their property of that right of protection which they were entitled to receive under international law. It may also be observed that the Department of Industry and Commerce rejected on October 18, 1917, and again on November 10, 1917, Méndez's denouncement under designation of "Cuatro Hermanos" of the same areas included in the mines which belonged to Flores and which he had leased to

McGrath. The rejection was upon the ground that the same property belonged to Flores and not to the denouncer. Nevertheless López and Méndez continued exploiting the claimant's mines. This was done notwithstanding the fact that Article 102 of Mexican Mining Laws makes it a criminal offense, with severe penalties, to remove ore from any mine prior to the date of issue by the Department of Industry and Commerce of its approval of the denouncement. This is the law even where the property denounced is a part of the public domain.

Having failed in their efforts to obtain relief by resort to judicial proceedings, claimants finally entered into an agreement with the trespassers, who agreed to relinquish possession of two mines and to offer no further interference with the operation of these mines by claimants, who in return agreed to purchase from Flores full title to a third mine, the above-mentioned Demacias de la Bruja, and to transfer such title to the trespassers for the same consideration that was paid to Flores. In this way Claimants finally obtained possession of the two mines on July 2, 1919.

The claim was disallowed by Commissioner Underwood because of the agreement with the trespassers. A petition for review was granted by this Commission. Order No. 40. For the reasons mentioned above we are of the opinion that the evidence shows denial of justice and that the claimants entered into the said agreement as a result of such denial and their consequent inability to regain possession of the mines otherwise.

In this case the Mexican authorities failed to accord claimants the right of protection to which they were entitled. As a result of this failure certain legal expenses and incidental costs were incurred. The claim of the *La Abra Silver Mining Company* (United States v. Mexico) before the Commission of 1868, like the instant case, involved dispossession of a mine in Mexico. With respect to the umpire's award in favor of the claimant it is stated in II Moore's *Arbitrations* 1328: "He was of opinion that the claimants should be reimbursed for their expenditures, and also for the value of ores which they had extracted but were forced to abandon."

Evidence in the record establishes that the expenses in defense of the legal rights of the partnership, all of which were paid by Mathews, amounted to \$2,477.65. The record does not disclose that Wilkinson expended any sum except the \$6,000.00 which he paid as the purchase price of one-fourth interest in the profits to be realized from the lease on the mines. We therefore hold that the claimant Mathews is entitled to an award of the entire amount which the record shows was expended by him in defense of the rights of claimants.

It is alleged in the Memorial that the trespassers extracted and shipped at least one car of ore per month, averaging 27 tons per car; that claimants could have recovered as much if they had been permitted to work the mines; that the trespassers had possession and worked the mines for a period of more than three years; and that the ore taken during that time was worth 150 pesos per ton.

From the evidence in the record we are convinced that the trespassers extracted at least 27 tons per month. It is shown that claimants embargoed nine cars of ore during a period of approximately six months. There is also evidence of the production of several other cars of ore during the period of the trespass and subsequent to August 18, 1917, which were not attached by claimants.

However, we are of the opinion that Mexico cannot be held responsible for the ores taken from the mines prior to the date on which claimants sought relief from the Mexican authorities. We must also allow a reasonable time after such date for hearing and determining the issues, and for taking the necessary steps to make the relief effective.

The first application to a court was made on August 18, 1917. No action on this complaint was taken by the court. In our opinion the court should have indicated the nature of some kind of action before October 1, 1917. From this date to July 2, 1919, on which date claimants obtained possession of the mines by virtue of the unfavorable compromise, was a period of 21 months. The total production of ore during this time, at the rate of 27 tons per month, amounted to 567 tons.

The evidence with the Memorial shows that these mines produced very rich ores of lead and silver with some gold. A liquidation sheet or statement of American Smelting & Refining Co. rendered to S. D. Mathews Mining Co. under date of March 10, 1920, shows claimants were paid at the rate of \$71.21 per ton for a shipment of 11,684 tons.

This latter value is substantiated by an affidavit of Juan M. Soto who states that he was in the employ of the trespassers during a portion of the time they occupied the mines, and that during that time they earned 150 pesos per ton. At that time this was equivalent to \$75.00. We believe a reasonable allowance for the cost of mining the ore is \$5.00 per ton since the ore was found at shallow depths and labor was plentiful and cheap.

Claimants are, therefore, entitled to an allowance of \$70.00 per ton for the 567 tons taken during the period between October 1, 1917, and July 2, 1919, or a total of \$39,690.00. Of this amount Mathews is entitled to 7/12ths, or \$23,152.50, and Wilkinson to 3/12ths, or \$9,922.50, Mathews should also receive \$2,477.65, the amount expended by him in defense of the partnership's legal rights.

The Memorial alleges that the mines had been left in a damaged condition and that claimants were forced to incur heavy expenses in the work of rehabilitation. No definite amount is alleged, and the only evidence furnished consists of pay roll sheets for the first six months of 1920. Claimants were working the mines, extracting and shipping ore during this period. There is nothing to show what portion of these pay rolls should be allocated to rehabilitation expense and what part to the current operations. For lack of adequate evidence no award can be made for this item of the claim.

We therefore award to Sam Davis Mathews \$25,630.15 and to Thomas W. Wilkinson \$9,922.50, with interest on each sum,

as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from July 2, 1919.

DECISION No. 3-D

General Docket No. 98. Special Docket No. 251. Claimant: Ferdinand Ephraim. Amount claimed: \$3,935,000.00. Award: disallowed.

This claim, in the amount of \$3,935,000, is for losses alleged to have resulted from the destruction of claimant's records on file in the courthouses at Lerdo, Durango, and Torreon, Coahuila, which were burned in 1911, by acts of Mexican revolutionary forces, including "mobs," within the meaning of Article III of the Special Claims Convention of September 10, 1923.

The jurisdiction of this Commission is based on section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

Claimant states in his affidavit dated May 23, 1936, that "Due to the burning of the records of the courts at Lerdo and Torreon, and the Claimant's documents on file therein, the continuous revolutions, disturbed conditions and lawlessness, the activities of revolutionary forces, the suspension of courts, etc.," he was unable to prosecute actions against various rubber manufacturers who were infringing a certain patent number 4079 granted to the claimant by the Mexican government. The burned records are alleged to have been on file in the courthouses in connection with the claimant's infringement suits, based on the said patent against the National Rubber Company, the Continental Mexican Rubber Company and Eric Northold. The claimant alleges that the "intrinsic value" of these records was \$3,935,000.

The claim is part of a larger one the amount of which was by the Memoranda of Claim \$46,339,620. In his appraisal of this larger claim, Commissioner Underwood segregated the gross sum of \$42,404,620 and declared it to be a General claim upon which "no award should be made." He declared the gross sum of \$3,935,000 is a Special claim to be settled pursuant to the Special Claims Conventions of September 10, 1923 and April 24, 1934, and consequently not within his jurisdiction. To this classification this Commission adheres.

The claimant has not shown that the specific records in question constitute the only kind of records on which a judgment in his favor could be obtained. In III Whiteman, *Damages in International Law* (1943) 1806, it is stated:

"The mere disappearance of books of account containing names of debtors or proofs of debt will not, of course, be indemnified *where other records or remedies continue to exist.*" (Emphasis supplied.)

In *Juan Andresen* (Germany v. Mexico), *id.*, a sum of \$10,000 national gold was claimed for the destruction of books and papers containing data with respect to the debtors of the firm "from whom he [the claimant] cannot collect not having the necessary data nor the proof prescribed by law." One of the grounds of disallowance of this item was that the disappearance of the books "does not exclude the taking of the action against the debtors which might appertain to the claimant."

Furthermore, the claimant has not established that the production of the records in question would have resulted in a judgment

in his favor. Nor is there evidence as to whether, and to what extent, a collection on the judgment would have been realized. To award compensation in this case the Commission would have to assume that the records in question were the only ones that could be presented by the claimant in support of his case in the municipal courts and, to assume further that the presentation of such evidence would have resulted in judgment in his favor, and finally to assume that a collection on the judgment would have been realized. In the absence of any evidence as to the exact nature of the records and their relation to applicable provisions of law as well as to the financial status of the defendants, to indulge in the above-mentioned suppositions would be to venture into the realm of conjecture. The claimant has also failed to submit any evidence as to the cost of the preparation of records said to have been destroyed. There is no sufficient proof to justify an award in any amount.

The Special claim is, therefore, disallowed.

DECISION No. 2-D

General Docket No. 106. Special Docket No. 2369. Claimant: The Laredo Electric and Railway Company. Amount claimed: \$875.00. Amount awarded: \$875.00.

This claim for \$875.00 is part of a larger claim in the sum of \$2,694.11 (Mem. p. 6) for losses resulting from (a) nonpayment by the Mexican authorities of a debt of a Mexican company to the claimant after seizure of that company's assets by those authorities and (b) nonpayment for electric power supplied by the claimant after that date at the request of one of the generals of the Constitutionalist Army or at the request of the city officials under the control and supervision of the national government.

The claimant, a Texas corporation, sold its electric distribution system in Nuevo Laredo in 1912 to the Cia. de Luz Eléctrica y Fuerza Motriz de N. Laredo, S. A., hereinafter referred to as the Mexican company. The claimant retained for its own use its power generating plant. In part payment of the purchase price it took back two notes for \$1,000.00 each which were secured by lien. On April 21, 1914, there was a total of \$2,044.59 owing on the two notes and for electricity supplied by the claimant to the Mexican company. On that date the Constitutionalist Army took possession of Nuevo Laredo and subsequently took over and operated, until the Civil Government came into power, the system of the Mexican company. Thereafter and between April, 1914 and March 1916 the claimant at the request of a general of that army or of the city officials under the control and supervision of the national government supplied electric current of the value of \$649.52.

In considering the larger claim, Commissioner Underwood held that by taking over the property and assets of the Mexican company without paying compensation therefor the "Mexican authorities deprived the claimant of such rights as it would have had under municipal law to proceed against the Mexican company to collect the account." With respect to the electricity supplied directly to the Mexican authorities he found that it was "an obligation which should have been met but was not."

Commissioner Underwood prorated the amount owed "in relation to the time the military authorities were in power" and found that the amount of \$1,819.11 was a general claim to be settled pursuant to the General Claims Convention of September 8, 1923. He rendered an award in that sum. Holding that the amount of \$875.00 was a special claim to be settled conformably to the Special Claims Conventions of September 10, 1923 and April 24, 1934, he found that he had no jurisdiction over that part of the claim. This Commission's jurisdiction over the claim of \$875.00 is based on section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

We are of the opinion that the claimant's loss of (a) the balance of the purchase price of the electric distribution system, and (b) the price of the electricity supplied to the Mexican company, gave rise to liability under the Convention of September 10, 1923.

There is accordingly awarded to The Laredo Electric and Railway Company the principal sum of \$875.00 without interest.

DECISION No. 1-D

General Docket No. 112. Special Docket No. 343. Agency No. 6561. Claimant: E. I. du Pont de Nemours and Company. Amount claimed: \$15,076.20. Amount awarded: \$500.00.

This claim, in the amount of \$15,076.20, is for losses alleged to have resulted from unlawful seizure and confiscation of explosives said to have occurred at Mexico City on or about July 25, 1913.

The jurisdiction of this Commission is based on Section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The claimant was organized as a Delaware corporation in September 1915, and is the assignee and successor of E. I. du Pont de Nemours Powder Company, hereinafter referred to as the Powder Company, a corporation organized in New Jersey in 1903.

Prior to and during the year 1913, the Powder Company maintained a branch office in the City of Mexico for the conduct of its business and shipped into Mexico large quantities of explosives of the kind involved in this claim for sale to mining companies, railroads and other industrial users in Mexico.

A regulation required special magazines for the storage of explosives. Several years prior to 1913 the Powder Company had constructed such magazines near the town of San Bartolo Naucalpan, State of Mexico, which was about eleven kilometers from Mexico City.

In January, 1913, J. G. Calderon, the company's manager in that city, applied for, and promptly obtained, permission from the Governor of the State of Mexico, in accordance with the usual procedure, to import a large quantity of explosives. They arrived at the port of Veracruz on June 27, 1913. Three carloads of them were transferred to freight cars for shipment to the company magazines. The cars contained 4,659 kegs of blasting powder, 303 kegs of black sporting powder, and 30 kegs of smokeless shotgun powder.

The cars arrived at Nonoalco Station in Mexico City early in July 1913. The first notice to Calderon that they had reached Mexico City was when an officer of the Mexican Army called at

the company office and requested that they be delivered to him, stating they they had just arrived, and that he had orders to take charge of them. Calderon promptly took the matter up with the War Department. About this time he received verbal notice from the Minister of War that he would like to have a satisfactory explanation as to the use which was to be made of the explosives in the three cars.

In a letter dated July 14, 1913, from Calderon to the Secretary of State and of the Office of War and Marine, an explanation was given of the history and purpose of the shipment, and the Secretary was requested to issue the necessary instructions to have the cars forwarded to Naucalpan.

A letter from the Secretary, dated July 22, 1913, informed Calderon that a report on his petition of July 14 had been made to the Provisional President of the Republic, Huerta, and that he "has seen fit to decide to advise you in reply that the powder referred to, is to be stored in the magazines of the Powder Factory, at Santa Fe, authorizing you to dispose of same in small lots, after giving advice in each case to this department."

This was followed by a letter dated July 25, 1913, from the National Powder Factory, Santa Fe, quoting the letter of July 22, and requesting Calderon to appoint some person to represent the company in the transfer of the powder.

Calderon continued to protest but without success and then, in compliance with the letter of July 25, he appointed one Emilio Hinojosa and his representative with instructions to have nothing to do with the transportation of the shipment but merely to obtain a receipt for the powder from the officials.

The next communication was a letter from the Secretary of State and of the office of War and Marine, dated August 7, 1913, advising Calderon that instructions had been given to the railroad for the transportation of the three cars from Nonoalco Station to Santa Fe. Pursuant to such orders two of the cars reached the government magazines at Santa Fe on August 19, 1913, and a receipt was issued on that date to the Powder Company for their contents.

On the same date the third car was wrecked and exploded at Tacubaya, a station located between Nonoalco and Santa Fe, near Mexico City, resulting in the entire destruction of the contents of this car.

After the explosion, Hinojosa was arrested and required to post bond of 1,000 pesos to secure his release. This bond was furnished in cash by the Powder Company. No formal charges were entered by the authorities against him, but the money was never returned to the company.

Certain incidental expenses, including bond and counsel fees for Hinojosa, demurrage, contribution to victims of explosion, etc., and which are made a part of the claim, amount to \$1,384.70. The value of the powder alleged to have been confiscated is fixed at \$13,691.50, making a total claim in the sum of \$15,076.20.

The answer of Mexico sets up several grounds of defense, only two of which have, in our opinion, such merit as to require consideration by this Commission.

The first of these is that Mexico is not liable for any of the acts of the Huerta Government, which was in power at the dates pertinent to this claim. It is contended that Huerta never succeeded in establishing a *de jure* or *de facto* government but simply usurped power for a time.

We cannot hold that this is a valid defense. The Huerta Administration, while it lasted, was the *de facto* Government of Mexico. See *George W. Hopkins* (United States v. Mexico), Opinions of the Commissioners (1927) 42; *George W. Cook* (United States v. Mexico), *ibid.* 318. While the administration of Huerta was never formally recognized by the United States, it was in fact recognized by some of the European countries. In any case Mexico assumed responsibility for the acts of *de jure* and *de facto* governments under Article III (1) of the Special Claims Convention of September 10, 1923.

Mexico also asserts that there was no confiscation of the powder. It contends that the diversion of the three cars, while in transit, and the enforcement of the requirements that the explosives be deposited in the government magazines instead of those of claimant, was an act of precaution, taken to prevent the possibility that the explosives might fall into the hands of revolutionists who were attempting to overthrow the administration of General Huerta, and that the powder remained the property of the company, subject to withdrawal and disposition by it in accordance with reasonable rules and regulations established by the War Department.

We are of the opinion that the Mexican Government had the right to take charge of the explosives and direct the storage thereof in its own magazines as an act of precaution. It is the inherent right of any government to take such action as may appear to it to be reasonably necessary for its own protection and preservation. It is also the duty of the government to take such steps as may seem necessary to protect the public from any apparent hazard or danger, injury or damage which might result in the event property, such as the powder involved in the present claim, should fall into the hands of rebels, revolutionists, bandits or any other lawless element of the population.

It is a matter of history that the Huerta regime was engaged in a serious struggle to maintain its hold on the governmental power. Its enemies were numerous and active. They would undoubtedly have availed themselves of any opportunity to seize the three cars of explosives, and to use them to their own advantage and to the disadvantage of the government in power.

The evidence in the record is insufficient to prove confiscation or expropriation of the powder as alleged by the claimant.

Claimant contends that the enforced deposit of its explosives in magazines other than its own resulted in the confiscation thereof.

We are of the opinion that the dangerously unsettled conditions which prevailed in Mexico at the time of the acts complained of could well have been sufficient to convince the government that the safety of the explosives could be more properly maintained and safeguarded in the government magazines at Santa Fe than

in company magazines at San Bartolo. The government knew that this powder was a prize calculated to incite revolutionists to make efforts to gain possession of it. It was also under obligation to protect claimant from loss of its property.

The evidence does not establish any intent on the part of the Mexican Government to confiscate and appropriate the powder.

The letter of July 22, 1913, authorized the company "to dispose of same (explosives) in small lots, after giving advice in each case to this department." This was confirmed in the letter of July 25, 1913.

The Powder Company was permitted to withdraw 40 kegs of powder at one time and 60 at another, both withdrawals occurring several months subsequent to the deposit at Santa Fe. It is also significant that it shipped 200 empty kegs from Repauno, a station in the vicinity of Veracruz, to Naucalpan in March 1914, "to be used in repacking kegs in damaged condition in possession of the Mexican Government." (Mem., Annex 5-C, p. 176.) It is improbable that the Powder Company would have furnished kegs for repacking of powder which it believed had been confiscated by the Mexican Government.

Our view on this point is further confirmed by Annex 4 of the Mexican Answer which sets out the report of the Division of Artillery of the Department of War and Navy to the General Military Commandant of Mexico, and which in three separate instances refers to the powder as being owned by the Powder Company.

Annex No. 1 of the Mexican Answer is a report made by the Department of War and Navy to the Department of Foreign Relations, under date of July 28, 1925. It appears therefrom that there was still in the Santa Fe magazines all of the powder which had been stored there in 1913, with the exception of that which had been delivered to the Powder Company.

Calderon, in his affidavit dated June 8, 1916, states that he was never permitted to dispose of the explosives. However, there is no allegation or proof that he or anyone else acting for the Powder Company made application to the War Department for a permit to dispose of any quantity of the powder. It is reasonable to suppose that if such application had ever been made it would have been in writing, that a copy of it would have been kept for the record, and that a copy of same, and of any reply received from that Department, would have been furnished as a part of the record in this claim.

In the absence of any evidence of a concrete nature that any request or demand was ever made for a permit to dispose of the powder we are unable to conclude that such permission was ever requested.

The Powder Company may have elected to treat the acts of the Mexican authorities as a conversion and confiscation, and to hold the government liable for the value, rather than to undertake to make disposition of the powder to its industrial customers under the regulations laid down for the withdrawal of it, when and as needed in the course of its business.

It is the opinion of this Commission that claimant has not established the confiscation of the powder and the consequent responsibility of Mexico for the value thereof.

Nor is there international responsibility on the part of Mexico for the contribution of \$250.00 which the Powder Company made to the fund for the benefit of those individuals who were injured or damaged as a result of the explosion of the car of powder; for the fee of \$100.00 paid to attorneys for the defense of Hinojosa; for the incidental expenses of the manager Calderon, Hinojosa and Garcia; for any payments made to photographers and engineers for photographs and surveys of the scene of the explosion; or for the value of kegs used to repack some of the powder. Furthermore considering Calderon's protests in their relation to the dates of the official communications referred to above, we are of the opinion that there was not any unnecessary and unreasonable delay on the part of the Mexican authorities in holding the three cars at the Nonoalco Station for a period of about 30 days. There is therefore no basis for liability for the sum of \$237.00 paid to the railroad as demurrage.

We must hold, however, that the Powder Company was entitled to the return of the \$500.00 which it deposited as bond to secure the release of its employee, Hinojosa. No formal charge of wrongdoing was ever lodged against him, and no evidence was offered by Mexico to refute the claim for this item.

E. I. du Pont de Nemours and Company is accordingly awarded the principal sum of \$500.00 without interest.

DECISION No. 57-C

General Docket No. 233. Claimant: Helen Ruby Hall, Executrix of the Estate of William S. Hall, Deceased. Amount claimed: \$1,762,000.00. Amount awarded: \$171,224.00.

This claim in the amount of \$1,762,000.00 is one of a large number of claims commonly known as Texas Cattle Claims, which claims are based upon the alleged theft or destruction by raiders from Mexico of cattle and horses of American citizens in Texas. The history of these claims and the principles applicable to their determination are set forth at length in the General Memorandum Opinion of this Commission dated December 30, 1944, which is appended hereto and made a part of this opinion. In that opinion this Commission sets forth the requirements as to proof in individual claims. It is necessary, therefore, only to apply these principles to the facts of this case.

The American nationality of the present claimants and their predecessors in interest is established by satisfactory proof.

There has also been established the loss of cattle and horses within the period of the jurisdiction of this Commission, and the fact that such losses were the proximate result of raids from Mexico. We find the liability of Mexico to be established upon grounds one, two and three of the categories of delinquencies required by Commissioner Underwood and quoted and approved by this Commission on page 17 of its aforementioned General Memorandum Opinion. We further find that satisfactory evidence has been produced showing that claimant suffered losses of livestock as the proximate result of a raid or raids from Mexico, as

required by Paragraph 3 of the "General Principles and Requirements" as set forth on page 20 of the Commission's General Memorandum Opinion.

We are thus brought to the question as to the amount of claimant's awardable losses. The conditions under which cattle ranches were operated in Texas during the period in question are described in the aforementioned Memorandum Opinion of this Commission on pages 3 and 4. Under the circumstances there described it would clearly be impossible to obtain eye witness testimony as to the loss of each particular herd or as to the exact number of cattle or horses seized by raiders from Mexico. It would likewise be impossible to obtain eye witness testimony as to the number of cattle which were taken across the Rio Grande into Mexico, or which were sold or slaughtered there. The difficulty of obtaining eye witnesses does not relieve the claimant of the burden of establishing the fact that awardable losses have been suffered. Neither does it render ineffectual, for purpose of determining the full extent of awardable losses, evidence proving that claimant has suffered such losses in some amount. Recognizing this difficulty of exact proof, in the circumstances, the Commission has arrived at its conclusion as to the extent of awardable losses by taking into account the factors hereinafter referred to.

In reaching a determination as to the amount of such awardable losses this Commission has given consideration to the testimony as to the number of cattle and horses owned by the claimant at the beginning of the period during which thefts are alleged to have taken place. It has also examined the records of purchases or other acquisitions of cattle during this period by claimant. It has then undertaken to compute the probable natural increase of such cattle. The testimony of expert witnesses and all other persons who testified before the Robb Commission was to the effect that the rate of natural increase of cattle in Texas during the period under consideration was $33\frac{1}{3}\%$ per annum. While the Commission can in no case allow an award for prospective increase of cattle which had been stolen, it will take into consideration the natural increase of cattle prior to the time such cattle or the increase thereof may have been stolen, as indicated by the evidence. The Commission has examined the branding records of claimant's cattle in each claim and the evidence of actual brandings of cattle wherever such evidence is produced. It has considered reported sales of cattle. Because of the scarcity of records during the period in question, it has taken into consideration the probable amount of sales which were made but of which no record was kept, and which were not reported or included in claimant's petition either before the Robb Commission or the General Claims Commission. It has also considered the probable number of cattle butchered by claimant, his family and employees. It has furthermore undertaken to estimate the number of live-stock which would be lost from natural causes, including disease, drought, exposure to weather, depredations by wild animals and like causes. It has examined the claimant's estimate of losses based upon the number of cattle alleged to be unaccounted for at the end of the period during which the losses occurred. After

considering all these factors in relation to the record in each case and the record in the case of other claimants similarly situated, the Commission has estimated the total number of cattle and horses which each claimant lost as a result of raids and thefts. In view of the conditions which prevailed on the open range, it is not possible to determine, even though specific raids have been proven, and large numbers of the claimant's cattle have been seen in Mexico, that all the losses suffered by a particular claimant were due to raids from Mexico. It has therefore been necessary to estimate the number of cattle and horses which may have been stolen or inadvertently taken and branded by citizens of the United States, or by Indians within the jurisdiction of the United States. In many cases, furthermore, the evidence would indicate that the raids and thefts began at a time prior to the commencement of the jurisdiction of this Commission. In such cases it has been necessary to allocate and determine the proportion of such thefts which occurred within the period of the jurisdiction of this Commission, that is, subsequent to July 4, 1868.

After examining the evidence in this case and considering all the foregoing relevant factors, the Commission is of the opinion that the above named claimant lost cattle and horses for the loss of which Mexico is liable, of a value of \$171,224.00.

Mr. Harold N. Marsh, one of the attorneys in this case, has filed a request for the determination of attorneys fees in the amount of 25% of the award. The attorneys have prosecuted this claim before the General Claims Commission beginning in 1926, and have also presented the claim before this Commission. In view of the long pendency of the claim and the difficult issues of fact and law presented, as well as the fact that the claimants have consented to the fee asked, this Commission finds that there are such special circumstances as to justify an award for attorneys fees in this case of 25% of the total amount of the award, to be paid two-thirds to Mr. Harold N. Marsh and one-third to Leroy G. Denman, and Gilbert M. Denman.

The Commission therefore awards a total sum of \$171,224.00 with interest from January 1, 1879, as provided by Section 7 of the Settlement of Mexican Claims Act of 1942:

To The Estate of William S. Hall, Deceased.....	\$128,418.00
To Harold N. Marsh, Attorney.....	28,537.33
To Leroy G. Denman and Gilbert M. Denman, Attorneys.....	14,268.67

DECISION No. 27-C

General Docket No. 272. Claimant: Joseph F. Rihani. Amount claimed: \$281,798.30. Amount awarded: \$141,423.88.

This is a claim to be indemnified in the amount of 563,596.61 pesos, with interest, based on an alleged denial of justice by the Supreme Court of Justice of Mexico through its allegedly erroneous decision in a suit brought by claimant against Comisión Reguladora del Mercado de Henéquen, of the State of Yucatán, hereinafter referred to as Reguladora.

The total amount claimed in the Memorial filed with the General Claims Commission was 536,153.11 pesos, Mexican gold, or its equivalent in United States currency, with interest thereon from July 3, 1923. By motion filed July 15, 1927 the American Agent

sought leave to amend two items of claim with respect to costs and damages so as to increase the total amount to 563,596.61 pesos. No decision was reached by the General Claims Commission upon the said motion.

It appears that under various decrees issued by the Governor of the State of Yucatán in 1916 and 1917, under authority of the Mexican Government, certain bills intended to circulate as legal money were issued by Reguladora. These decrees provided among other things for the issuance by Reguladora of cashier's certificates in various denominations having a value equivalent to the national gold currency of the United Mexican States, which should circulate until the Government of Yucatán should decree their exchange or payment by Reguladora in the national gold of Mexico or its equivalent.

Under Decree No. 590 of October 29, 1919, promulgated by the Governor of Yucatán, the above-described bills were ordered to be withdrawn from voluntary circulation as paper money on December 31, 1919, and it was provided that the holders of such bills might deposit them with Reguladora during the months of January, February, March and April 1920, and receive dividends upon their deposits according to a schedule of liquidation set forth therein.

Claimant became the legal owner prior to October 29, 1919 of bills issued by Reguladora, as aforesaid, in the amount of 267,759 pesos.

On February 3, 1920 claimant, accompanied by a notary, made demand on Reguladora for payment of his bills. Reguladora's manager refused to pay the same, contending that they were subject to the order and manner of payment prescribed in the terms of the aforesaid decree of October 29, 1919.

Claimant refused to acquiesce in that contention of Reguladora and on said day, to wit, February 3, 1920, instituted legal proceedings in the Numerary District Court of Yucatán for the collection of said bills, in the form of mercantile executive proceedings under the Commercial Code of the United Mexican States. Simultaneously with the filing of the bill of complaint there were filed with the said court all of claimant's said bills issued by Reguladora together with a certified copy of the proceedings held by the notary at Reguladora's office in connection with the demand for payment and refusal of Reguladora to pay the same.

Pursuant to the provisions of the Commercial Code of the United Mexican States and in accordance with prescribed proceedings in executive mercantile actions, a writ of attachment was issued on February 3, 1920 by said court by the terms of which the clerk of the court was ordered to demand of Reguladora immediate payment of the amount claimed, and if payment were not made, to levy upon sufficient property of Reguladora to satisfy any judgment the court might render in favor of claimant. By the terms of the above writ, Reguladora was required to pay the amount demanded and costs within three days after demand or file exceptions to the execution of the writ. On February 4, 1920 the clerk of the court having made the demand as ordered and Reguladora having refused payment, levied upon about 13,526

bales of hemp and sealed Reguladora's warehouse where said hemp was stored. Likewise on February 4, 1920 said court delivered the Reguladora bills which had been filed with it in connection with this suit, to the Treasury Department in Yucatán for safekeeping. Those bills constituted "executive titles" required as a basis for instituting executive proceedings under the provisions of Article 1392 of the Commercial Code of Mexico, hereinafter set forth.

Various proceedings were thereupon taken by Reguladora by way of appeal, petition and challenge, and the case came on to be tried by the Supernumerary District Court which decreed on May 10, 1920 that claimant be paid in full, with legal interest and costs, from which judgment Reguladora appealed on May 12, 1920 to the Ninth Circuit Court of Mexico. The latter court on July 28, 1920 affirmed the decision of the former tribunal.

The case came to the Supreme Court of Justice of Mexico in September 1920 in the form of *suplica*, instituted by Reguladora. After some delay, the court finally set November 10, 1921 as the date for the hearing and it was heard on that and the following day. On November 11, 1921 the court voted on the case, allowing the appeal by Reguladora and, by a vote of six to four, reversed or "revoked" the decisions of the courts below. Pursuant to the said judgment of the Supreme Court of Justice of Mexico, the action was dismissed and the warrant of attachment vacated.

It is the contention of the claimant that the said decision was so grossly erroneous as to constitute a denial of justice. In support of such contention claimant points out that the action of the Supreme Court in reversing the lower courts was predicated principally upon the fact that there had been no presentation of the Reguladora bills in connection with the institution of the suit, as required under the provisions of Article 1392 of the Commercial Code of Mexico. Said Article 1392 is as follows:

"The plaintiff having presented his demand accompanied by the 'executive' title, the writ shall be prepared in the form and with the effects of a peremptory order, so that debtor may be required to make the payment, and if he does not do so; that sufficient goods to cover the debt and costs may be attached, such goods to be placed, upon responsibility of the creditor, in custody of a person named by him . . ."

In our view, the claimant had fully complied with the aforesaid provisions. The records of the case before the Supreme Court in the form of findings of fact and conclusions of law set forth in the decisions of the Supernumerary Court and of the Ninth Circuit Court of May 10, 1920 and July 28, 1920, respectively, clearly established that the Reguladora bills were presented to the court with the complaint upon the institution of the suit (Exhibit 11a, Mem., pp. 153, 156, 157, 160, 183, 200, 201, 202, 212, 213, 214, 215, 216, 217; Exhibit 14a, Mem., pp. 246, 247, 249, 250, 255, 256, 258, 259).

Moreover, it appears from the record that during the conference of the court November 10-11, 1921, Justice Gonzales explicitly pointed out to his associates that claimant had presented the bills, with his complaint, as required (Mem., p. 315, Annex 21; *ibid.*, 323, Annex 22). Notwithstanding this fact and in the

face of the explicit showing in the record of compliance by the claimant with the applicable statute, the court held that there was no such evidence and dismissed the suit upon the ground as aforesaid. This action by the court left the claimant only with such recourse as he might choose to have against Reguladora. This relief, however, was of no avail inasmuch as Reguladora was already insolvent.

The action of the Supreme Court in vacating the attachment had the effect at the same time of removing the only property of Reguladora from which the claim for the amount of the bills could have been satisfied. This Commission regards the action of the Supreme Court to be such a gross and wrongful error as to constitute a denial of justice. This injustice is so clear and notorious as to place it, in our opinion, within the decision in the case of *Ida Robinson Smith Putnam* (United States v. Mexico), Opinions of the Commissioners (1927) 222, 225, wherein it was stated:

"Only a clear and notorious injustice, visible, to put it thus, at a mere glance, could furnish ground for an international arbitral tribunal of the character of the present, to put aside a national decision presented before it and to scrutinize its grounds of fact and law."

Commissioner Underwood, in rejecting this claim, appeared to be under the impression that it had been determined by the Supreme Court of Justice of Mexico that Reguladora was a public agency and that as such its property could not have been the subject of the attachment in question. For example, he states at page 26 of his opinion that:

"... in the discussion of the Justices ... it appears that the Comisión Reguladora was regarded as a public agency ... (Mem., 301, 323-324, 352-353)."

While it is true that in the discussions which took place during the hearings before the Court reference was made to Reguladora as a public agency, it should be noted that the decision of the Supreme Court which is, of course, controlling in the case, did not ultimately hold that Reguladora was an agency of the government (Mem., pp. 274-281). It is clear from the discussion of the Justices that had they determined that Reguladora was a public agency, the court would have vacated the attachment and suspended the action on that ground (Mem., pp. 371-373). That the court held to the contrary is evident from its decision. One of the grievances relied on by Reguladora, as stated in the decision of the Supreme Court of Mexico, dated May 23, 1923, was the following: "III. That no notice was taken of the exception of failure to acknowledge the signature." In passing on this grievance or ground of appeal, the Supreme Court, in its decision, held (Mem., p. 279):

"Therefore, 5: As documents to bearer are not subject to acknowledgment of those signing same, *as in other private documents in general*, according to Art. 617 of the Commerce Code, the third grievance is not well taken." (Italics supplied.)

It is thus manifest that the Supreme Court did not cast the mantle of immunity upon Reguladora against litigation or attach-

ment and that it did not intend to except it from proceedings in an executive mercantile action such as that instituted by claimant herein.

It should be further noted that the alleged official character of Reguladora was not urged herein nor in the proceedings in Mexico. On the contrary, the Mexican Agency appearing before Mr Underwood's Commission in the so-called Reguladora claims maintained that it was a private institution. A reference to General Docket No. 1154, claim of *William M. James*, one of a number of similar claims, supports the above-stated position, and regarding which Commissioner Underwood said in his opinion in the claim just mentioned:

"The Mexican Agent, therefore, says that there was no ruling by the Supreme Court in the *Rihani* case on the question of the official character of Reguladora."

And further on:

"In the Answer and Reply Brief it is strenuously contended on the part of the Mexican Agent that Reguladora was a private cooperative association, for the acts of which the respondent Government is not responsible. This is a corollary to the proposition that it was a private institution.

"The Mexican Agent contends that the Federal Government of Mexico had the right to prosecute, and embargo against the assets of, Reguladora and thereby to obtain a priority over its other creditors."

From all of the foregoing this Commission is of the opinion that the action of the Supreme Court in vacating the attachment and suspending the action upon the ground that claimant had not presented the Reguladora bills as required by statute in the face of the clear and indisputable evidence in the record to the contrary, more particularly in view of the fact that the attention of the court had been drawn to such evidence by one of its members, warrants the conclusion that the said court wilfully disregarded such evidence; that the decision of the court was lacking in good faith and that the same fell so far short of international standards as to amount to a denial of justice. So holding, this Commission concludes that the claimant is entitled to an award for the damage sustained by virtue of the aforesaid denial of justice.

The claim is itemized as follows:

	Mexican pesos
1. Amount of Reguladora bills.....	267,759.00
2. Money expended by depositary.....	16,587.56
3. Legal remuneration to depositary.....	8,032.77
4. Interest on money expended by depositary, June 30, 1921 to July 3, 1923.....	3,992.18
5. Costs, February 3, 1920 to July 3, 1923.....	38,587.31
6. Interest, February 3, 1920 to July 3, 1923.....	54,890.80
7. Damages	173,746.99
	563,596.61

The Commission concludes that the following items are proper as elements of damage:

Mexican pesos

Item 1. Amount of Reguladora bills.....	267,759.00
Item 2. Money expended by depository.....	16,587.56
Item 3. Legal remuneration to depository.....	8,082.77
	292,379.33

Items 4, 5, and 6 covering as they do "indirect damages" are generally disallowed and the Commission accordingly makes no award therefor. In discussing claims of this nature Borchard, in his work, *The Diplomatic Protection of Citizens Abroad* (1925) 415, states as follows:

"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage."

Further, at page 417, Professor Borchard states that:

"Expenses incurred in the presentation and prosecution of a claim have in many, although not in all cases, been allowed as recoverable elements of damages. When disallowed, the refusal may be justified on the ground that as a general rule of municipal law the costs and expenses of litigation other than the usual and ordinary court costs are not recoverable in an action for damages, and this ground has in certain cases been expressly advanced."

The claim for 173,746.99 pesos (Item 7 above) is likewise disallowed, the evidence to support the same not being sufficiently persuasive to warrant an award on the basis thereof.

Accordingly, the Commission finds that claimant has suffered damage in the amount of 292,379.33 pesos. At the rate of exchange (.4837) on July 4, 1923, the date of the final judgment of the Supreme Court of Mexico, claimant is entitled to \$141,423.88 with interest thereon from that date.

The claimant is awarded the sum of \$141,423.88 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from July 4, 1923.

DECISION No. 7-D

General Docket No. 396 (part). Special Docket No. 63 (part). Claimant: Zacatecas Mining and Metallurgical Company. Amount claimed: \$184,316.47. Award: disallowed.

Originally this claim was filed with both the General Claims Commission and the Special Claims Commission, United States and Mexico, respectively, in the sum of \$194,316.47 described in the memorandum of claim (p. 1360) as follows:

Loss, taking away and destruction of property.....	\$19,316.47
Loss through forced cessation of operations of business.....	175,000.00
Total	194,316.47

The Joint Committee created pursuant to the Convention of April 24, 1934 found that the entire claim was one within the jurisdiction of the General Claims Commission. However, when the claim was reached for consideration by Commissioner Underwood of the aforesaid Commission he held that \$10,000 of the aforesaid item of \$194,316.47 was of a general nature and that the balance of the claim in the sum of \$184,316.47 was within the jurisdiction of the Special Claims Commission. Commissioner

Underwood appraised the said general claim of \$10,000 as being entitled to "no award" and this Commission has certified to the Treasury Department an award to that effect, pursuant to section 4 (b) of the Settlement of Mexican Claims Act of 1942. There is thus before this Commission the aforesaid claim in the sum of \$184,316.47 pursuant to section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

Claimant is a corporation organized under the laws of the State of Maine on December 20, 1906. Its general offices were in New York City and it alleges that it owned and operated mines and a cyanide plant in the vicinity of Zacatecas, Mexico.

The allegations as to losses of claimant are contained in the application for support of claims on a form furnished by the United States Department of State and executed on May 16, 1922 by one Arthur Linder, as president of the claimant corporation. In said form claimant alleges the confiscation of various items of personal property from its mines and adjacent buildings on the dates therein mentioned. The losses are attributed to forces variously described as revolutionists, an armed rebel force, Mexican military authorities, federal forces, or a body of armed men.

The claim for \$175,000 is for the loss of prospective profits which claimant avers it suffered "through forced cessation of operations of business." The memorandum of claim alleges that the forced abandonment resulted "because of the disturbed conditions, uprisings, and lack of protection by authorities." This item is based on an estimate that claimant could and would have earned net profits averaging \$35,000 per year during the five year period from about April 1, 1914 to about April 1, 1919. However, there is no evidence as to the earnings of the mines and mill prior to April 1, 1914 or any other proof to support the aforesaid estimate. An award upon this aspect of the claim could not, therefore, be predicated upon anything but sheer conjecture or speculation. Moreover, if a loss of the nature alleged were established by competent proof, no recovery could be had therefor. Under the terms of the Special Claims Convention of September 10, 1923, only such losses are compensable as are shown to have been caused by the acts of forces enumerated in Article III thereof. No allowances may be made for losses resulting from a general condition of disturbance or revolution. See decision of this Commission in claim of *Arbuckle Brothers*, General Docket No. 51, wherein we consider the question of liability for such losses. The claim for \$175,000 for loss of prospective profits is disallowed.

The balance of the claim in the sum of \$9,316.47 must likewise be disallowed for insufficiency of proof. One of the larger items included in said amount represents a claim for \$7,042.86 based on removal of property by federal forces. It is alleged that certain receipts were given for only a small quantity of the removed property and that on taking an inventory and comparing it with the "original inventory" it was found that the value of the "stolen" property actually amounted to \$7,042.86. However, neither the receipts nor the inventories mentioned in connection with this item were ever produced although their production was requested by the American Agency. Nor is there any evidence to establish

the other allegations made by Linder in the aforesaid form executed by him in 1922. From information gathered from the correspondence files it appears that one M. E. McDonald was president of the claimant corporation at the time losses were alleged to have occurred. Mr. Linder became the president many years later. When he executed the aforesaid application for submission to the State Department Mr. Linder described his occupation as investment banker or stockbroker in New York City. It is not shown that he was in Mexico during the time the losses were alleged to have occurred or that he had any personal knowledge concerning them. He does not allege that the facts as to the losses are based on any entries in the books or records of the company made contemporaneously with the losses. An award would clearly not be warranted upon the basis of this cold record.

The allegations concerning losses of and damage to the other items of property of the claimant are also without competent evidence of any kind to support them. The only evidence even remotely corroborative of the losses is a letter from McDonald to one Frederick G. Corning dated January 24, 1936 where he makes the general statement that the claimant had suffered heavy losses, including the loss of eight or ten tons of powder and five tons of cyanide. It should be noted that these items are not mentioned in the aforesaid Department of State application executed by Linder.

There is also no proof that the alleged theft and confiscation of claimant's property or damage to its buildings and machinery were attributable to forces enumerated in the said Article III of the Special Claims Convention.

The claim is accordingly disallowed.

DECISION No. 36-D

General Docket No. 418. Special Docket No. 505. Claimant: Jacob E. Touché. Amount claimed: \$83,976.00. Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The entire claim was originally filed by memorandum notice with both the General and Special Claims Commissions in the amount of \$126,476, said to be equivalent to 252,952 pesos. It was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *general* claim.

Claimant alleges that various Mexican armed forces, during the period from December 1, 1913 to February 1, 1916, deprived him of the possession of a number of his buildings in the City of Chihuahua, Mexico, confiscated his personal property, destroyed one of his buildings in order to widen a street, levied a forced loan upon him, and made it necessary for him to incur substantial expenditures in making repairs to the buildings after they had been returned to his possession.

The American Commissioner, designated under the General Claims Protocol between the United States and Mexico of April

24, 1934, in his appraisal of the claim classified the item of claim representing the alleged value of the building destroyed for the purpose of widening a street (85,000 pesos or \$42,500, United States currency) as a *general* claim, but held that no award should be made with respect to that item. He classified the balance of the claim (\$83,976) as a *special* claim. No objection having been made by the claimant to that appraisal, this Commission on August 11, 1944 entered an award on the basis thereof conformably to the provisions of section 4 (b) of the Settlement of Mexican Claims Act of 1942. There accordingly remains to be disposed of the portion of the claim classified by the American Commissioner as special namely, \$83,976.

It appears that the original claimant in this case, Jacob E. Touché, formerly a Turkish subject, was naturalized as an American citizen by the District Court of El Paso County, Texas, on or about February 16, 1904.

In an affidavit executed on June 1, 1926 by Elias J. Touché, eldest son of Jacob E. Touché, it is stated that the latter died in Venice, California, on August 16, 1924. The affiant stated that he had been a resident of Mexico since 1901.

The will of Jacob E. Touché dated June 28, 1924, by which he disposed of his property in the City and County of El Paso, Texas, indicates that he had two sons (including Elias J. Touché) and one daughter, all born in Palestine, and two sons and a daughter born in Mexico.

Elias J. Touché was named as executor of the above-mentioned will. No record is furnished of any disposition by Jacob E. Touché, by will or otherwise, of the property said to have been owned by him in Mexico.

Jose J. Touché, another son of Jacob E. Touché, at various times asserted that he was the sole owner of the present claim but no evidence to establish such ownership was furnished.

Since the American citizenship of none of the persons who may have succeeded to the interest of Jacob E. Touché in the property here involved, or in the present claim, is established, the claim must be disallowed for lack of proof of American interest therein. Moreover, there has not been presented satisfactory evidence to establish either the ownership by Jacob E. Touché of the real or personal property involved, or the extent of the damages alleged to have been sustained as a consequence of the acts of revolutionary forces or other authorities in Mexico.

For the reasons indicated, the Commission decides that the claim must be disallowed.

DECISION No. 24-D

General Docket No. 429 (part). Special Docket No. 472 (part). Claimant: E. A. Goff. Amount claimed: \$500.00. Amount awarded: \$250.00.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is a part of a larger claim which was filed by memorandum notice with both the General and Special Claims Commissions,

and which was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim.

The entire claim was presented by memorial to the General Claims Commission in the total amount of \$6,540. The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 classified five of the items of claim as general and made an appraisal thereof in the amount of \$1,700 with interest. This Commission on November 12, 1943 entered an award on the basis of that appraisal conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. The remaining items of claim in the amount of \$500 were classified by the Commissioner as special. Claimant has indicated no objection to the action of the American Commissioner and has filed no additional evidence under section 3(c) of the above-mentioned Act in support of the items classified as special.

The special items of claim are for the value of five horses taken from the claimant in 1916 and 1917 by federal and revolutionary forces. Claimant, an American citizen, at the time of the loss owned a farm near the town of Tuxpam in the State of Veracruz, where he engaged in stock raising and agriculture.

It is established that the horses were taken by forces for whose acts liability exists under the terms of the Special Claims Convention of September 10, 1923. The Commission concludes, however, that the evidence submitted is insufficient to support the claim of value of \$500 asserted by claimant and assesses the value of the animals taken at \$250.

Accordingly the claimant is awarded the amount of \$250, without interest.

DECISION No. 20-C

General Docket No. 444. Claimant: United Dredging Company. Amount claimed: \$30,640.75. Amount awarded: \$30,640.75.

This is a claim for reimbursement of expenses in the sum of \$30,640.75 which were incurred by claimant in making soundings in the Pánuco River at Tampico, before and after the dredging of some thirteen kilometers under a contract with the Mexican Government, dated January 22, 1917. Claimant, an American corporation, alleges that it duly complied with all the obligations imposed upon it by the contract, and admits that the respondent government paid all amounts for which it was liable under the terms of the contract, with exception of the expense of making the soundings.

There arose a difference of opinion between the parties to the contract as to which was obligated to pay such expense. This disagreement was based on the construction of Article Fourth of the contract, which reads as follows:

"Fourth: To estimate the work done in the river's bed which is to be dredged, it shall be divided into sections of fifty (50) meters on the straight lines of the course, and twenty-five (25) meters on the curves, and be measured by means of transverse sections, to be taken before and after the dredging.

"The soundings and other data required to determine the transverse sections to which the preceding clause refers, shall be taken by a Government inspector, in the presence of the engineer or engineers of the Contractor, and this data shall serve as basis so that the Contractor may draw up a monthly pay voucher to be signed by the Government inspector."

Claimant contended that under the terms of Article Fourth Mexico was obligated to take the required soundings and pay the expense incurred in so doing. This obligation Mexico denied.

In his appraisal Commissioner Underwood held that Article Fourth placed no responsibility on Mexico for payment of the expense of taking the soundings.

Claimant's petition for review was granted by this Commission. Order No. 48.

The Commission finds from the evidence that Article Fourth of the contract, which obligated the Government of Mexico to take the required soundings, also obligated said government to pay the necessary expenses incurred in performing such work. The claimant undertook this work. There is no evidence that the respondent government objected to this. The soundings were necessary for the completion of the work and were taken by the claimant with the Mexican Government's knowledge. In the circumstances the Commission holds that the Mexican Government must pay the expenses of the soundings. Claimant alleges that such expenses, in the amount of \$30,640.75, were paid by it during 1918. This allegation is not disputed.

The amount of the expenses is shown by the affidavit of the vice president and engineer in charge of the work. He is unquestionably the person most likely to have the best information concerning such expenses, and his statements are corroborated by the original vouchers.

Accordingly, the claimant is awarded the sum of \$30,640.75, with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1919.

DECISION No. 36-C

General Docket No. 445. Claimant: Walter M. Dexter, et al. Amount claimed: \$80,000.00. Amount awarded \$12,500.00.

This claim is before the Commission pursuant to the provisions of section 4(a) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been made by the Commissioner designated by the United States under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 53, dated December 4, 1944).

The claim was originally filed on behalf of the relatives and on behalf of the estate of Edward G. Dexter, an American citizen, who was murdered by a group of Mexican citizens near a mine operated by the decedent several miles from the village of Taviche, in the State of Oaxaca, on or about January 14, 1913. Indemnity was also sought by the individual claimants for the robbery and desecration of the grave of decedent's wife. The individual claimants and their relationship to decedent are as follows:

Walter M. Dexter (brother).
Sarah Dexter (sister).
Henry H. Dexter (brother).
Jessie Dexter Shedd (sister).
Christopher D. Potter (nephew).
Hope Lee Potter (niece).
Edward W. Shedd (brother-in-law and administrator of the estate of Edward G. Dexter, deceased).

Liability on the part of the Mexican Government is predicated upon allegations of lack of protection, failure to prosecute and punish all of the persons who participated in the murder, inadequate punishment of one of the murderers who was tried and convicted, failure to prosecute and punish persons guilty of the aforesaid desecration of the grave of decedent's wife, and failure to provide protection to the property of the decedent following his murder.

It appears that in 1907 Edward G. Dexter and his wife went to Mexico where they established a residence a short distance from the village of Taviche in the State of Oaxaca. Shortly thereafter Dexter acquired an interest in a gold and silver mine in the same locality, known as the Atristain Mine, which was already in operation and which he proceeded further to develop and operate. It is said that by 1913 this property represented an investment of some \$47,000.

Mrs. Dexter died in the late summer of the year 1912 and her body was buried near the residence on the mining property.

On the afternoon of January 15, 1913 the dead body of Dexter was found on the floor of his home by auxiliary police who were engaged at the time in tracing down persons accused of law violations in that vicinity. The condition of the body left no doubt that Dexter had been brutally murdered and orders were promptly issued by the authorities for the arrest of his assailants.

The record of the proceedings conducted in connection with the investigation of the murder and punishment of the persons implicated therein, which was furnished by the respondent government, discloses great laxity on the part of the responsible officials. Notwithstanding the fact that numerous persons suspected of implication in the crime were present in the vicinity of its commission, no arrests were made until more than two months after Dexter was murdered.

Four persons suspected of being implicated were arrested on March 18, 1913. They supplied the names of other persons who had participated in the murder of Dexter. It appears that only one of these persons, one Pedro Lucas, was arrested. He confessed his guilt, and was sentenced to twenty years imprisonment. None of the other eight persons named by Lucas as participants in the crime was arrested or punished and the record contains no satisfactory explanation of the failure to apprehend and punish them. Lucas also confessed to his participation in the desecration of the grave of Dexter's widow. This act was committed about a week after the murder of Dexter. He supplied the authorities with the names of his accomplices in that crime. None of these persons was apprehended or punished. Other persons arrested were re-

leased without a trial although their own statements left no doubt of their guilt as accomplices in the murder of Dexter.

It is impossible from an examination of the record of these proceedings to avoid the conclusion that the conduct of the Mexican authorities in the investigation of these crimes and in the punishment of the persons implicated therein constitutes such an utter indifference to the performance of their duties as clearly to impose liability on the Mexican Government under well recognized principles of international law.

It was also alleged by the claimants that following the murder of Dexter and due to the failure of the Mexican Government to suppress lawlessness in the vicinity of decedent's mining property, which rendered it unsafe to undertake to operate the property, the latter deteriorated and became a total loss. Taxes on the property were paid by claimants only until 1915. In 1922 and 1923 title to the property was declared forfeited for non-payment of taxes.

The American Commissioner designated under the General Claims Protocol of April 24, 1934, in his appraisal of this claim held that inasmuch as one of the persons who participated in Dexter's murder had been punished an award could not be made for the failure of the Mexican Government to apprehend and punish other persons involved therein. He appraised the claim for the desecration of the grave of Dexter's wife at \$5,000.00. He further concluded that a satisfactory basis of liability had not been established with reference to the alleged loss of the mining property.

The petition for review alleged that the American Commissioner erred in not making an award for the murder of Dexter, and in finding that the loss of the mining property, under the circumstances disclosed by the record, did not afford a proper ground for an indemnity.

The Commission considers that the first contention of claimants possesses merit. The authorities of the Mexican Government were under an obligation to take appropriate measures for the apprehension and punishment of those participating in the murder of Dexter and failure to do so establishes Mexican liability under international law. For Mexico's delinquency in that connection, the Commission considers an indemnity in the amount of \$12,500.00 to be proper, each of Dexter's four brothers and sisters to receive an award of \$3,125.00.

There is no authority to support an award to claimants Christopher D. Potter and Hope Lee Potter, nephew and niece, respectively, of decedent, there being no showing that they were dependent upon deceased for support. No award is made to any of the claimants herein for the desecration of the grave of Mrs. Dexter, the degree of relationship between Mrs. Dexter and all the claimants being too remote to permit an award in that connection.

With respect to the claim which is made concerning the loss of the mining property of the decedent, the Commission does not find in this record evidence which would warrant an award. Mexico's failure to provide protection is not established. Likewise,

there is no showing that the government's action in forfeiting title to the property for non-payment of taxes thereon was improper.

An award of \$12,500.00, without interest, is accordingly made herein, to be distributed among claimants as follows:

Walter M. Dexter	\$3,125.00
Sarah Dexter	3,125.00
Henry H. Dexter	3,125.00
Jessie Dexter Shedd	3,125.00

DECISION No. 9-C

General Docket No. 459 (part; interest of J. D. Groesbeck). Claimant: W. E. Dodson, Jr., and J. D. Groesbeck (Dodson Manufacturing Company). Amount claimed: \$348.63. Amount awarded: \$348.63.

This claim, in the sum of \$348.63, arises out of damages resulting from the loss of merchandise belonging to W. E. Dodson, Jr., and J. D. Groesbeck in the Customs House of Piedras Negros, Mexico, in September 1914.

Dodson and Groesbeck were equal partners in the firm of Dodson Manufacturing Company located at the City of Torreon, State of Coahuila, Mexico. During September 1914 they had merchandise valued at \$697.25, which had been accepted by the customs authorities and had been converted by one of the customs officers to his own use.

Commissioner Underwood properly held that this part of the claim is general, and is meritorious. He accordingly allowed it, without interest. He held that Dodson's American nationality was proved, but that there was lacking proof as to the American nationality of J. D. Groesbeck. His appraisal was for one-half or \$348.62, without interest, to W. H. Dodson, Jr. An award based thereon has been entered accordingly by this Commission on July 5, 1944, pursuant to section 4(b) of the Settlement of Mexican Claims Act of 1942. The claim for \$697.25 is part of an entire claim for \$8,625.57, the remainder of which was classified by Commissioner Underwood as a Special claim.

The petition for review filed by the heirs of J. D. Groesbeck, deceased, was granted, Order No. 35, June 16, 1944.

On review and upon examination of the additional evidence received herein, it appears that J. D. Groesbeck was born in the United States on October 18, 1859. He lived throughout his life in the United States. He died on October 9, 1940. His American nationality has been established.

It is the opinion of this Commission, that the heirs of J. D. Groesbeck, deceased, are entitled to a sum of \$348.63, without interest.

An award is accordingly made in favor of the heirs of J. D. Groesbeck in the amount of \$348.63, without interest.

DECISION No. 4-D

General Docket No. 459 (part). Special Docket No. 566. Claimant: W. H. Dodson, Jr., and J. D. Groesbeck (Dodson Manufacturing Company). Amount claimed: \$7,928.32. Amount awarded: \$7,928.32.

This claim, in the sum of \$7,928.32, is for requisitions by armed Mexican revolutionary forces of Generals Villa, Contreras and

Robles, of various quantities of coke and coal, cast iron, metals, and other personal property; for occupancy of premises by revolutionists; and for unpaid postal money orders given to claimants by Villa during the years 1913, 1914 and 1916. This claim, classified by Commissioner Underwood as Special, is part of an entire claim in the sum of \$8,625.57, the remainder of which was classified as General.

The Dodson Manufacturing Company was a partnership composed of W. H. Dodson, Jr., and J. D. Groesbeck, the latter now deceased, who were equal partners in said firm located at the City of Torreon, State of Coahuila, Mexico. The American nationality of W. H. Dodson, Jr., was proved before Commissioner Underwood; that of J. D. Groesbeck is proved by new evidence.

It appears from the evidence that the Mexican revolutionary forces requisitioned from claimants' firm on October 23 and November 25, 1913, certain quantities of fuel and merchandise amounting to \$121.27, which merchandise was delivered to Generals Villa, Contreras and Robles. Another requisition was made by Villa on December 26, 1916, of certain merchandise delivered by claimants as directed, amounting to \$714.70. The evidence further discloses that claimants were given two postal money orders by Villa, dated April 7, 1913 and February 14, 1914, totalling \$112.35. The last item of claim for \$7,000 is supported by evidence showing that the revolutionists had rented claimants' premises for the months of October and November, 1913, and from April 4 to December 4, 1914, a total period of ten months at the rental of \$1,000 per month, upon which total sum of \$10,000 claimants received \$3,000, leaving a balance as aforesaid.

The total of the above-mentioned items comes to \$7,948.32. Claimants asked in their Memorandum of Claim for damages in a total sum of \$8,625.57. The amount of \$7,948.32, together with the sum of \$697.25 classified as a General claim, aggregates \$8,645.57. Commissioner Underwood in making his appraisal deducted \$20.00 from the amount which he allocated Special (\$7,948.32) in order to reduce the total of the items claimed to the total sum claimed in the Memorandum of Claim. This practical disposition of the discrepancy appears to be fully justified and is approved.

The claim appears to be sufficiently supported by the evidence. The allocation of the same as Special by Commissioner Underwood appears to be proper and brings it within the purview of Article III of the Special Claims Convention between the United States and Mexico of September 10, 1923.

Accordingly the claimants are awarded the sum of \$7,928.32 without interest, as follows:

To W. H. Dodson, Jr.....	\$3,964.16
To heirs of J. D. Groesbeck.....	\$3,964.16

DECISION No. 42-D

General Docket Nos. 509 and 2560. Special Docket No. 8 (part). Claimants: Edetha D. Womer, individually, and as guardian of her minor children, Edetha Margaret Womer, Booker Melvin Womer, Sylvester Stanley Womer and Ray Wilma Womer. Amount claimed: \$90,000.00. Amount awarded: \$15,000.00.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions and, with the exception of a small item of \$130, was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. The portion of the claim classified as general was presented by memorial to the General Claims Commission in the amount of \$90,000.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that the claim falls within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923. The claimant expressed no objection to the action of the American Commissioner and, except for an affidavit with reference to her correct name, has filed no additional evidence under section 3(c) of the Settlement of Mexican Claims Act of 1942, in support of the claim.

The present claim is based upon the murder of Mell Womer, an American citizen and husband of the claimant, by members of Villa revolutionary forces on or about August 15, 1915, near the station of Bauche, some thirteen miles south of the city of Juarez, State of Chihuahua, Mexico. It is also alleged that authorities of the Mexican Government failed to take appropriate steps to investigate the crime and to prosecute and punish the offenders. Additional claim is made in the amount of \$5,000 for the loss of profits which it is estimated the decedent would have received from the sale of certain cattle.

For some time prior to his death, Womer, a dealer in lumber and cattle, resided with his family at Pierson and other towns in northern Chihuahua. On the morning of August 15, 1915, at the customs house in Juarez, the decedent met Generals Tomas Ornelas, Manuel Ochoa and another, who is identified as either Captain Rodolfo Fierro or General Francisco Murgia, all officers of the Villa revolutionary forces. These officers induced the decedent to accompany them by automobile to a place near the station of Bauche, about thirteen miles south of Juarez, where they stated they had some cattle which they wished to sell. While proceeding on foot from the automobile to the place where the cattle were supposed to be located, one of the officers dropped behind the others, drew his pistol and shot and instantly killed Womer. After covering his body with stones and brush, the officers departed in their automobile in the direction of Juarez. The following day the body of Womer was discovered by a Mexican named Marcario Contreas, who had seen the officers in company with Womer the previous day near the scene of the crime and had heard several shots fired. General Ochoa subsequently admitted that Womer had been murdered but denied complicity in the crime.

The identity of the three officers mentioned above as members of the Villa forces is established as is their responsibility for the murder of Womer. In its decision in the so-called Santa Ysabel

group of claims, the Special Mexican Claims Commission, established under an Act of Congress of April 10, 1935, in discussing the status of the forces of Villa during the period here involved observed that:

"From the date of the breach between Carranza and Villa at the end of September, 1914, to the date of the establishment of a *de jure* government by Carranza in April, 1917, the forces of Villa could be regarded as forces arising from the disjunction of revolutionary forces within the meaning of paragraph (3) of Article III of the Convention (forces arising from the disjunction of successful revolutionary forces or from the disjunction of revolutionary forces opposed to such successful revolutionary forces up to the time when the government *de jure* established itself as a result of a particular revolution). During the part of this period the forces of Villa might also be regarded as revolutionary forces which succeeded in establishing the so-called government of the Convention in November, 1914. Moreover, in view of the fact that Villa and his forces, of varying numbers, continued their opposition to Carranza from September, 1914, until Carranza's final overthrow in May, 1920, the forces of Villa could, during the whole of this period, be regarded as revolutionary forces which succeeded in establishing a *de facto* government in 1920 or as revolutionary forces opposed, in the sense of paragraph (2) of Article III, to revolutionary forces which succeeded in establishing a *de facto* government in 1920." (Report of that Commission to the Secretary of State (1938), p. 105.)

On the basis of the foregoing observations the Special Mexican Claims Commission held that the Mexican Government was liable for the acts of Villa forces. That government is equally liable for the acts of said Villa forces involved in the instant case.

The decedent at the time of his death was 39 years of age. He was survived by his widow and their four children all of whom were minors at that time. The claimant and her children, all American citizens, were entirely dependent upon the decedent for their support. There is some evidence in the record that the income of the decedent was \$4,000 yearly. But for his untimely death it may reasonably be assumed that his widow and children would have continued for many years to enjoy his companionship and support. In the light of these circumstances, all of which are properly to be taken into account in fixing the amount of indemnity to which the claimant is entitled, the Commission decides that the claimant and her children are entitled to awards as follows:

Edetha D. Womer, widow.....	\$7,000
Edetha Margaret Womer, daughter.....	1,500
Booker Melvin Womer, son.....	1,875
Sylvester Stanley Womer, son.....	2,125
Ray Wilma Womer, daughter.....	2,500

\$15,000

Accordingly, an award is made to each of said claimants as above indicated, without interest.

There is not, in the opinion of the Commission, sufficient evidence in the record to justify an award with reference to the item of claim for the loss of profits from the sale of cattle.

DECISION No. 10-C

General Docket No. 592. Claimant: A. W. Geist, Jr. Amount claimed: \$92,934.00. Amount awarded: \$29,287.26.

This is a claim to be indemnified in the sum of \$92,934, being forty-five percent of \$206,520, the amount claimed in the Memorial, and is predicated upon losses resulting from the expropriation of 2,808 hectares and damages incident to the expropriation of land owned by La Union en Cuale, S.A., situated in the State of Jalisco, Mexico.

By a final and definitive decree of the President of Mexico on July 25, 1929, there were expropriated 2,808 hectares of said land, following the previous taking over of 9,360 hectares by the town of Puerto Vallarta on February 27, 1922, by virtue of the decree of the Governor (Mem., pp. 157-159, 196), which were, however, reduced to 3,744 hectares by Presidential decree of 1926. In the latter year La Union en Cuale having appealed for a writ of *amparo* to the Supreme Court of Mexico, and same having been granted, the President of Mexico confirmed on July 25, 1929, the prior expropriation to the extent of 2,808 hectares, as aforesaid.

The claimant is an American citizen. His allotment in said corporation represents forty-five per cent of the losses.

The land in question was acquired by La Union en Cuale through grants from the President of Mexico in 1857 and 1858 for 3,000 pesos and the obligation by said company to colonize the land within a period of five years.

Commissioner Underwood computed the damages at \$23,216 and claimant's share of forty-five per cent at \$10,447.20. In arriving at his appraisal he classified the land with the following values:

1. 100 hectares of urban land at \$50 per hectare.....	\$ 5,000
2. 400 hectares of flat farm land at \$14 per hectare.....	5,600
3. 1,000 hectares of hillside land at \$10 per hectare.....	10,000
4. 1,308 hectares of hilly land for pasture at \$2 per hectare.....	2,616

\$23,216

The petition for review sets forth certain contentions, the ones requiring serious consideration being that he failed to classify said lands properly; that he placed a value upon said lands far less than their true value; and that he failed to allow interest from February 27, 1922, the date when possession was taken. The petition was granted. Order 17.

There is no merit to the first contention, for Commissioner Underwood's classification of the land appears to be in consonance with the 1926 ejidos decree and the Presidential decree of 1929. There is merit to the second contention which will be discussed below. The third contention as to failure to allow interest from February 27, 1922, the date of dispossession, is also meritorious.

The ejidos decree of 1926 declares that, "there are three to four

hundred hectares of level tillable land which may be considered as first class," and "100 for the urban section, 400 of level land for the cultivation of tobacco, corn, beans, etc., and 1,000 of hilly land which, besides being suitable for corn, contains a considerable amount of coconut palms, varying in density but averaging about 200 palms per hectare, each palm tree producing annually 1 kilo of small coconut, the only labor required being that of cleaning same." The 1929 decree describes the land as tillable and of good quality.

There is evidence that in 1906, 400 hectares were leased for five years with an option to purchase for 40,000 pesos within that time. By the rental terms varying within this period, there was an average rental of approximately \$1.50 per hectare per year. In the latter part of 1925, neighboring land was sold for forty-five pesos per hectare. Prior to that date, the corporation conveyed some land at a rate of from 10,000 to 20,000 pesos per hectare. Prior to 1925, there were sold about 1,000 acres unimproved land for \$20,000; and in Puerto Vallarta there were sold lands ranging in price from 10 centavos to 2 pesos per square meter. Approximately 2,000 pesos were received annually for the rights to gather "coquito" on the land. The partial value of said land is claimed to be thirty dollars per hectare.

It appears that the expropriated land is located in and around the town of Puerto Vallarta, a thriving port on the Pacific Ocean. The land has been described by the President of Mexico as tillable and of good quality. Because of its location and the quality of a considerable part of the land expropriated, as well as for the considerations stated above, we conclude that claimant is entitled to forty-five per cent of an award based upon our valuation of said 2,808 hectares, as follows:

100 hectares—urban, \$65.00 per hectare.....	\$6,500.00
400 hectares—flat cultivated, \$30.00 per hectare.....	12,000.00
1,000 hectares—hilly suitable for cultivation, \$20.00 per hectare.	20,000.00
1,308 hectares—hilly-pasture, \$5.00 per hectare.....	6,540.00
	\$45,040.00

Items of the claim include losses and damages incident to the expropriation and interest for loss of use of the property from February 27, 1922. The sum of \$9,019.26 is awarded for loss of use from February 27, 1922, the date of dispossession, to July 25, 1929, the date of the Presidential decree of expropriation.

An award is accordingly made in favor of the claimant in the total amount of \$29,287.26, with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from July 25, 1929.

DECISION No. 49-C

General Docket No. 639 (part). Claimants: Thompson and Osborne (Merton V. Dutcher), John S. Cox. Amount claimed: \$101,240.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol

between the United States and Mexico of April 24, 1934, and a review of that appraisal having been requested by claimants Merton V. Dutcher and John S. Cox, the same was granted by this Commission (Order No. 55 dated January 12, 1945).

The claim as originally filed was for damages sustained by American nationals as a result of the alleged negligence of the Mexican Government in connection with diversion of water from the Colorado River in Mexico and the consequent flooding of claimants' lands located in the Imperial Valley, State of California, and the destruction of property thereon. It is also alleged that the diversion of the water in Mexico so affected the flow of the river in the United States as to cause serious damage to the property of certain of the claimants in the Yuma Valley. Liability is also sought to be imposed upon the Mexican Government for its failure for more than a year and a half after the original damage occurred in 1904, to take effective action looking toward the abatement thereof.

The facts underlying the claim may be briefly summarized as follows. A few years prior to the events underlying these claims certain Americans conceived the idea of irrigating the lands of Imperial Valley. This Valley was 100 feet below sea level. Its irrigation was to be effected by means of a canal fed through a cut in the Colorado River a short distance north of the international border. In order to avoid sand hills in the United States the canal was to cross over into Mexico and thence run westward to a point on the border just south of the Valley where the land is relatively flat. From that point the water was to be distributed to different parts of the Valley through subsidiary canals.

The California Development Company, a New Jersey corporation, was formed for the purpose, among others, of making said diversion from the Colorado River in the United States. Sociedad de Irrigacion y Terrenos de la Baja California, S. A., (subsidiary of the American company) was organized in Mexico for the purpose of conveying the water through the canal over the lands in Mexico and delivering it to the American company at the border, south of Imperial Valley, where it would in turn be delivered to irrigation companies for distribution to the farmers of that Valley. To obviate the necessity for applying to the Mexican Government for a concession, the Mexican company had previously purchased some 100,000 acres of land in Mexico to be traversed by the canal in that country.

The first water under this arrangement was delivered to Imperial Valley in 1901 or 1902. It was apparently not until 1903, however, that the American company realized that the permission of the War Department was necessary to make the above-mentioned diversion from the river in the United States. Upon its application for such permission in 1903, it was advised that, while the War Department did not approve such diversion, it would not interfere unless the company's operation affected the navigation of the river. This and certain other circumstances left the American company in a precarious position with reference to its ability to continue to furnish water to the residents of the Imperial Valley. To overcome that difficulty the American com-

pany conceived the idea of having the diversion of water from the Colorado made in Mexico instead of in the United States.

Accordingly, on May 17, 1904, a contract was entered into between the Mexican Government and the Mexican company, Sociedad de Irrigacion y Terrenos de la Baja California, S. A. This authorized the company to make a diversion of water from the Colorado River in Mexico for the purpose of providing water for irrigation in Imperial Valley, California, and in Mexico "without injuring the right of a third party." It was therein provided that within twelve months from the date of the contract the company would request "the approval of the Secretary of Development" and deliver to his office "the design of the hydraulic works" necessary for the diversion of water "with a descriptive report and the necessary maps and profiles for greater clearness of the details of the works" and "with the approval of the inspector to be appointed"; also, that the company would remain "subject, in all that refers to the present contract, to the inspection of the engineer whom the Secretary of Development names."

Pursuant to the aforementioned contract, the Mexican company, during the latter months of 1904, made a cut in the bank of the river a few miles south of the international border in Mexico without the prior installation of facilities for the control of the water which was to pass through. Upon the advent of heavy floods in the river during the winter of 1904-1905, great volumes of water passing through the cut greatly enlarged the opening to the point where most of the water of the river was being diverted and flowing in the direction of Imperial Valley, a distance of some 35 to 40 miles from the point of diversion. Efforts on the part of property owners near the border to prevent the water from reaching the Valley which, as noted above, was at a distance of over 100 feet below sea level, were unsuccessful. Property in the Valley was eventually inundated with the flood waters to a depth which at times exceeded 40 feet.

Claimants contended that it would have been possible during the dry seasons of 1905 and 1906 to close the cut at a cost of not to exceed \$10,000, thus preventing additional damage, but that no effective action toward that end was taken until early in 1907. In the meantime, property owners in the Valley were subjected to additional damage by the floods which occurred during the years 1905 and 1906. The closing of the cut in Mexico was finally accomplished by the expenditure of over a million dollars advanced by the Southern Pacific Railway Company after the Government of the United States had intervened with the Government of Mexico and the latter had brought the necessary pressure to bear upon the Mexican company.

In their pleadings and briefs filed with the General Claims Commission serious issue is raised by both Governments regarding the interpretation and meaning of the aforementioned contract of May 17, 1904. On behalf of the claimant government it is argued that the contract gave to the company the right to make the diversion of the water from the Colorado River in Mexico without prior approval by the Mexican Government of the plans for the proposed diversion; that the only restriction upon the

company was that in all matters relating to the execution of the contract its action was subject to the inspection of the engineer to be appointed by the Mexican Government; that the diversion of water was in fact made by the company with the full knowledge and acquiescence of both the engineer and the Mexican Government; that the attempt of the Mexican Government to delegate to the Mexican company its sovereign duty of preventing controllable forces within its jurisdiction from doing injury to the nationals of an adjoining state could not relieve it from responsibility for damage resulting from such action; that the Mexican Government was negligent in failing to take reasonable and timely measures to abate the damage caused by the original, negligent diversion of the water.

The respondent government, on the other hand, contended that the contract vested the company with no authority to make the diversion without prior approval of the plans therefor by the Mexican Government; that such approval had not been given before the diversion was made; that the diversion was made without the government's knowledge or consent; that the resulting damage was not foreseeable, and that the Mexican Government was not negligent in requiring the contracting company itself to abate the damage.

In holding that the Mexican Government was not responsible for the damages sustained by the claimants, the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, stated that the Mexican Government, in entering into the contract of May 17, 1904, could not reasonably have foreseen the calamity which followed, and that to impose liability under the circumstances of this case would be unjust.

Petitions for review of the appraisal of the American Commissioner were filed on behalf of only two of the claimants. The principal ground on which a review was urged is that the Commissioner disregarded well established rules of international law in reaching the conclusion that liability on the part of the Mexican Government did not exist on the basis of the facts outlined above.

The record in this case is voluminous and the issues involved are discussed at great length in the briefs filed by the two governments. Numerous affidavits were presented for the purpose of showing that the diversion of the water in Mexico was made with the full knowledge and consent of the Government of Mexico prior to the installation of the necessary control gates. Most of the evidence presented by the claimant government relating to that matter appears to have been compiled in connection with the preparation of these claims many years after the damage occurred. On the other hand, evidence presented by the Mexican Government and which is more or less contemporary with the events underlying the claim indicates that prior approval by the Mexican Government of the plans for the diversion had not been obtained. Thus, in a report made to the Mexican Government on November 27, 1905, by C. R. Rockwood, Chief Engineer of the California

Development Company, and the man under whose direction the cut in Mexico was made, it is said:

"On September 3, 1904, we requested permission to open two canals connecting the Colorado River with the principal canal of the Company, which for some time was being constructed on lands of the Sociedad and was receiving the water from an intake established on American territory by the 'California Development Company'. As it was not possible to obtain official consent to the opening of said canals, but acting under the advice of our attorneys, we proceeded to the construction thereof and while we were preparing the maps, plans, etc., of the hydraulic works, floodgates and all the rest, we began at the same time the works of the floodgates, etc. The plans were presented to the Government on December 16, 1904 and by that time the water was already running through the said canals and the works in the construction of defensive measures and floodgates for the regulation and handling of the waters were already very advanced.

"We found ourselves obliged to begin the execution of those works before obtaining the official approval of the Government of the respective plans because of the very powerful reason that the water service was seriously threatened because the intake constructed on American territory had been obstructed in such a manner by the sediments carried in such a large amount by the waters of the Colorado that it was not possible to obtain through that channel water in a sufficient quantity for the lands which were then under cultivation in Mexico and the United States."

Again, in 1909, Mr. Rockwood wrote as follows:

"We hesitated about making this cut, not so much because we believed we were incurring danger of the river's breaking through as from the fact that we had been unable to obtain the consent of the Government of Mexico to make it, and we believed that we were jeopardizing our Mexican rights should the cut be made without the consent of the Government. On a telegraphic communication, however, from our attorney in the City of Mexico, to go ahead and make the cut, we did so under the presumption that he had obtained the necessary permit from the Mexican authorities. It was some time after this, in fact after the cut was made to the river, before we discovered that he had been unable to obtain the formal permit, but had simply obtained the promise of certain officials that we would not be interfered with, providing that plans were at once submitted for the necessary controlling structures to be placed in this heading.

"... As soon as the cut was decided upon elaborate plans for a controlling gate were immediately started and, when completed early in November, were immediately forwarded to the City of Mexico for the approval of the engineers of the Mexican Government, without whose approval we had no authority or right to construct the gate. Notwithstanding the insistence of our attorney in the City of Mexico and various

telegraphic communications insisting upon this approval being hurried, we were unable to obtain it until 12 months afterward, namely, the month of December, 1905." (*Imperial Valley and Salton Sink*, by H. T. Corey, pp. 1286-1287).

The foregoing statements and the other evidence in the record showing the facts and circumstances surrounding the diversion of water from the river in Mexico clearly disclose an absence of negligence on the part of the Government of Mexico in connection with such diversion of water. The record contains no competent evidence of consent by the Mexican Government to the making of the second cut in the river without full compliance with the provisions of the contract of May 17, 1904, nor is there any competent evidence in the record of a waiver by the Mexican Government of such provisions or any of them or of the acquiescence by the Mexican Government in the making of said cut without full compliance with said contract. The safeguards incorporated into the contract of May 17, 1904, seem clearly to negative the view that the Mexican Government thereby undertook to delegate to the contracting company its sovereign responsibility toward the nationals of an adjoining state. So far as appears, the subject matter of the contract was in no sense unlawful or against public policy, and had the provisions thereof been observed, it is not apparent that any damage resulting from its execution could have been regarded as foreseeable. To hold in this case that the Mexican Government must bear responsibility for damages caused to citizens of a neighboring state resulting from a violation of contractual obligations on the part of a company with whom the Government contracts would be to render the government for all practical purposes, a guarantor against occurrences of that kind. We are aware of no authority in support of that proposition.

An examination of the evidence in the record bearing upon the action of the Mexican Government in its efforts to abate the damage indicates that the California Development Company, of which the Mexican contracting company was a subsidiary, at all times recognized its obligation to close the cut which had been made in Mexico.

The record shows also that the Mexican Government was engaged in making investigations of the existing situation and cooperating with the California company in attempting to arrive at an effective solution of the problem of closing the break. On December 17, 1906, the Department of State sent the following telegram to the American Ambassador in Mexico City:

"You will express to the Government of Mexico the appreciation of this Government of the good disposition of the Government of Mexico concerning the restraining of the course of the waters of the Colorado river toward the Imperial Valley, according to your telegraphic report of the 14th instant."

The magnitude of the task involved may be gathered from the numerous unsuccessful efforts which were made by the California company and the expenditures incurred in finally effecting a control of the water.

In these circumstances we conclude that the charge of negligence on the part of the Mexican Government in abating the damage has not been proved.

In view of all the foregoing, the Commission decides that a valid basis of liability is not established. The claim is accordingly disallowed.

DECISION No. 37-D

General Docket No. 661 (part). Special Docket No. 529 (part). Claimant: Tabasco Plantation Company. Amount claimed: \$2,836,293.83. Amount awarded: \$202,766.34.

This claim in the amount of \$2,836,293.83 is before this Commission pursuant to the provisions of section 3(a) (5) of the Settlement of Mexican Claims Act of 1942.

The claimant, an American national, in 1908 acquired by purchase two plantations known as San Miguel and La Oaxaquena situated, respectively, in the States of Tabasco and Veracruz, Mexico. The former contained an area of about 7,500 acres and the latter approximately 24,800 acres. It was the purpose of the claimant to utilize these properties principally for the production of sugar cane, cacao and rubber. A portion of the property was intended to be used as a cattle ranch. On the La Oaxaquena property claimant erected a modern sugar factory and alcohol distillery, fully equipped with the necessary machinery and accessories; also office buildings, warehouses, commissaries, hospitals, residences for its employees and other buildings. A 25 mile railway was constructed thereon for the transportation of sugar cane from the fields to the factory. Claimant also utilized in connection with its business certain boats and marine equipment. Exclusive of the value of the lands, claimant's investment in this business up to June 30, 1912, is said to have amounted to \$2,823,208.94.

The business of the company apparently proceeded without interruption up to 1912 during which year profits from its business are shown by the audit and report of the certified public accountants to have been \$113,090.08. From that time forward claimant's business appears to have been seriously interfered with as a result of the activities of revolutionary, federal and other forces, which seized and confiscated property of the claimant and otherwise rendered difficult the continuation of its business.

The evidence contained in the record establishes that the losses for which claim is made in eight of the nine items of claim which are before this Commission, namely, items 1, 2, 4, 5, 8, 12, 13 and 14, in the total amount of \$52,766.34, were occasioned by forces for whose acts liability on the part of the Mexican Government exists under the provisions of Article III of the Special Claims Convention of September 10, 1923. The claimant is entitled to indemnity in the amount claimed with respect to those items.

A different situation exists, however, with reference to the remaining item of claim in the amount of \$2,773,208.74, said to represent the value of claimant's entire investment, exclusive of the original cost of the land, and loss of profits for eight years from 1913 to 1920. Although claims based upon the loss of prospective profits cannot be regarded as falling within the category of losses contemplated by Article III of the Special Claims Conven-

tion of September 10, 1923, it is apparent that claimant has sustained losses resulting from the tortious interference with its business and the forced abandonment of its property for which it should receive compensation.

The raid on "La Oaxaquena" plantation on June 2, 1917, established in connection with Item 12 (Mem., pp. 459-506) (Annexes 64-72 inc.), falling within the provisions of Article III, paragraph 5 of the Convention of September 10, 1923, appears to be a sufficient cause for the reduction in total tons produced on the land during the year 1917 as shown on Annex 100E, Memorial, page 691. The same can be said regarding the loss of production in the year 1918. The raids of similar nature on "La Oaxaquena" January 24 and March 18, 1919 and on "San Miguel" on January 20, 1919 established in connection with Items 13 and 14 respectively, can reasonably be accepted as justification for abandonment of the properties in 1919 and 1920 and complete failure of production thereon during those two years.

Considering all the evidence, the Commission concludes that claimant is entitled to an award of \$150,000 representing damages sustained as a result of the tortious interference with its business and the enforced abandonment thereof, as set forth under Item 15 for which Mexican liability exists under Article III, paragraph 5 of the Convention of September 10, 1923.

An award is accordingly made in favor of the claimant in the amount of \$202,766.34, without interest.

DECISION No. 32-D

General Docket No. 668 (part). Special Docket No. 808 (part). Claimant: Quimichis Colony. Amount claimed: \$4,769.70. Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is part of a larger claim in the amount of \$181,800 which was filed by memorandum notice with both the General and Special Claims Commissions. The Joint Committee created under the Special Claims Convention of April 24, 1934 classified items of claim totalling \$45,283.19 as a general claim, and the balance thereof in the amount of \$136,516.81 as a special claim. The portion of the claim classified as special was disposed of by the Special Mexican Claims Commission created under an Act of Congress of April 10, 1935. One of the items classified as general (\$17,963.19) was not prosecuted by the claimant government. Of the remaining items classified as general by the Joint Committee (\$27,320), the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that items totalling \$4,769.70 fell within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. With respect to items in the amount of \$22,550.30 he made an appraisal in the amount of \$810.27.

The claimant having made no objection to the action of the American Commissioner, this Commission on November 11, 1943 entered an award on the basis of that appraisal conformably with the provisions of section 4 (b) of the Settlement of Mexican

Claims Act of 1942. There accordingly remain for final disposition items of claim amounting to \$4,769.70 classified by the American Commissioner as special.

It may be noted that while the memorial with reference to the items classified by the Joint Committee as general was filed in the amount of \$27,320, this amount was reduced in the brief of the claimant government to \$2,591.33.

The items of claim here involved have reference to certain issues of paper currency which it is stated the Compania Agricola de Quimichis, S. A., (a Mexican corporation of which the claimant, an American national, owns all the stock) was obliged to accept in payment of goods sold by it and in payment of rents on property owned by the company during the years 1913 - 1916. The currency in question is described by the claimant as follows:

	Pesos
1. Bills of the Constitutionalist Government of Mexico, issued at Monclova, Coahuila, pursuant to a decree of Venustiano Carranza, as First Chief of the Constitutionalist Army, dated April 26, 1913.....	1,105.00
2. Bills of the Constitutionalist Army of Mexico, issued in the City of Chihuahua, pursuant to a decree of Venustiano Carranza, as First Chief of the Constitutionalist Army, dated February 12, 1914.....	4,857.00
3. Bills of the State of Chihuahua, issued at the City of Chihuahua on December 10, 1913.....	704.00
4. Bills of the State of Chihuahua, issued at the City of Chihuahua, pursuant to a military decree of February 10, 1914.....	639.00
5. Bills of the State of Sonora, issued at Hermosillo, pursuant to a decree of August 27, 1913.....	216.00
6. Bills of the State of Sinaloa, issued at San Blas under decrees of July 13, September 15, and October 23, 1913; at Culiacan, pursuant to a decree of December 13, 1913, and at Mazatlan, pursuant to decrees of February 25, and April 10, 1914.....	600.00
7. Bills of the General Pay Office of the Brigade of Sinaloa, issued at Mazatlan, Sinaloa, pursuant to authorization of General Alvaro Obregon, dated August 19, 1914.....	1,070.00
8. Bills of the General Pay Office of the Northwestern Army Corps, issued at Culiacan, Sinaloa, by General Alvaro Obregon.....	65.00
9. Bills of the General Pay Office of the Northwestern Army Corps, issued at Guadalajara, Jalisco, by General Alvaro Obregon.....	120.50
10. Bills of the Western Division of the Constitutionalist Army, issued at Guadalajara, Jalisco, by General Amado Aguirre.....	11.00
11. Bills of the Territory of Tepic, issued by order of General Rafael Buelna.....	2.50
12. Bills of the Treasury of the Federation, issued at Guaymas, Sonora.....	149.40
	9,539.40

The only evidence contained in the record regarding the circumstances under which this currency came into the possession of the Mexican company is found in an affidavit of W. C. Dunn, Vice-President and General Manager of that company, dated January 5, 1931, in which he states:

"that at divers times during the years 1913 to 1916, inclusive, the aforesaid Compania Agricola de Quimichis received in good faith in payment for agricultural products, goods,

wares and merchandise sold by it, and in payment of rents on property owned by it, as appears from the books of the said Compania . . . various bills of paper money which had been issued and made of forced circulation, at their face value, by various authorities acting for this government of Mexico."

Of the 9,539.40 pesos involved in the 12 items mentioned above, Mr. Dunn stated that only 857 had been presented for redemption. He added that

"such provisions as were made for the alleged redemption of said bills were so entirely inadequate, unfair, inequitable, illegal, illusory and unsuitable as to be wholly unacceptable by said Compania; . . ."

Since the record indicates that provision was made for the redemption or exchange of most of the bills in claimant's possession, its failure to avail itself of the opportunity to have such bills exchanged for other currency would preclude the assertion of a valid claim before this Commission. With respect to the small portion of the bills presented by the claimant, for redemption, but with regard to which no provision for exchange was made, it is to be noted that no evidence is furnished bearing upon the cost or value of the goods sold by the Mexican company in exchange for which it received the paper currency. There is accordingly not established a proper basis upon which it would be possible to determine the extent of any loss which the claimant may have sustained.

Accordingly, the Commission decides that the claim must be disallowed.

DECISION No. 14-D

General Docket No. 670 (part). Special Docket No. 632 (part). Claimant: John L. Friedman. Amount claimed: \$7,727.10. Amount awarded: \$2,780.00.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3(a) (5) of the Settlement of Mexican Claims Act of 1942.

The entire claim in the amount of \$36,511.91 was filed by memorandum notice with both the General and Special Claims Commissions and was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *general* claim.

A memorial covering eight separate items of claim totalling \$36,652.01 was filed with the General Claims Commission on October 22, 1935.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, classified three of these items as a *general* claim and made an appraisal with respect thereto in the amount of \$1,786.91. That appraisal was accepted by the claimant and this Commission on November 11, 1943, entered an award on the basis thereof conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. He classified the remaining five items of claim as *special*. These remain for disposition by this Commission. They are itemized as follows:

1. Damages resulting from a battle between federal forces and Carranza forces on claimant's ranch (situated near the City of Victoria, State of Tamaulipas), in November 1913, including the killing or confiscation of claimant's horses, mules, oxen, bulls, corn; destruction of fences, henequen plantation, etc.	\$1,180.50
2. Value of personal property consisting of tools, household utensils, harness, farming implements, etc., which claimant allegedly stored at a ranch (El Coyote) near his own in 1913 for safekeeping, and which were seized, appropriated and carried away by different groups of armed Mexicans.....	653.00
3. Value of 16 Jersey and Holstein cattle placed by claimant in 1913 on the Huasacana ranch for safekeeping, plus "reasonable increase" of that herd over an 8-year period (45 head or more), which it is said were taken in 1917 by officers of the government and roving bands of armed Mexicans.....	3,850.00
4. Value of claimant's trunk placed in the American Consulate in Monterrey for safekeeping in 1913, but which Mexican federal forces permitted to be stolen when they entered the Consulate on April 22, 1914.....	127.00
5. Value of mining tools and equipment taken by Carranza soldiers in 1914 from the Tajo Viejo mine.....	1,916.60
	7,727.10

The claimant, an American citizen, was at all times pertinent to the claim, the owner of the *El Llano* ranch, comprising about 650 acres, situated near the City of Victoria in the State of Tamaulipas. The property appears to have been utilized by the claimant principally for the raising of henequen although other crops, such as corn and beans, were also produced to some extent. Claimant also appears to have had the use for grazing purposes of other portions of the same ranch, the ownership of which portions he had disposed of prior to the events underlying this claim.

As to the property involved in the aforesaid Item 1 the Commission finds that the loss is fully established but that an allowance of \$1,000 to cover such loss is adequate in the light of the evidence presented.

The loss of the property covered by Item 2 and the value thereof is established by affidavits of several persons who were present when the losses occurred as well as by other evidence appearing in the record. The Commission considers this item of loss is adequately established in the amount claimed.

Item 3 is a claim for the value of sixteen cattle belonging to the claimant which had been removed in 1913 to a nearby ranch for safety, and for the value of the estimated increase in that herd. Aside from the fact that the evidence fails to disclose in a satisfactory manner what disposition was made of the cattle or that their loss was due to circumstances involving the responsibility of the Mexican Government, the claim based upon the loss of increase in the herd is too speculative in nature to provide a sound basis for an award. This item of claim must, therefore, be disallowed.

Item 4 is established by evidence sufficient to warrant its allowance in the amount claimed.

While the loss of the property included in Item 5 appears to be adequately established, the evidence relating to the value thereof cannot be regarded as sufficient to warrant an allowance in the total amount claimed. In the opinion of the Commission, an award

of \$1,000 may properly be made on account of this item on the basis of the evidence presented.

All of the losses enumerated above with the exception of those involved in Item 3, are shown to have been occasioned by acts of forces for whose acts liability is established under Article III of the Special Claims Convention of September 10, 1923.

An award is accordingly made in favor of the claimant in the total amount of \$2,780 without interest.

DECISION No. 10-D

General Docket No. 678 (part). Special Docket No. 731 (part). Claimant: William B. Wofford. Amount claimed: \$114,125.55. Amount awarded: \$31,000.00.

This claim was originally filed with both the General and Special Claims Commissions for a total amount of \$146,304.05, itemized as follows:

1. Personal property taken from claimant's ranch by Madero forces in January, 1911	\$750.00
2. False arrest, detention for "several days" and mistreatment of claimant by officials of the Mexican Government at Veracruz in April, 1914	5,000.00
3. False arrest, detention for "several days" and mistreatment of claimant by Mexican civil authorities at Veracruz in September, 1915	5,000.00
4. Personal property taken from claimant's ranch by Huerta forces on May 5 and 6, 1914	21,428.50
5. Personal property taken from claimant's ranch by various forces in 1915 and 1916, and by forces of de la Huerta in 1923	2,375.55
6. Loss of crops, income from property and damage to property 1911 to 1923	111,750.00
	146,304.05

Items Nos. 1 and 4 above were classified by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *special* claim. The Special Mexican Claims Commission established under an Act of Congress approved April 10, 1935, by its Decision No. 432, disallowed said items.

The remaining items were classified by the said Joint Committee as a *general* claim, and were considered by the American Commissioner, Honorable Oscar Underwood, Jr., designated under the General Claims Protocol of April 24, 1934. Commissioner Underwood considered Items Nos. 5 and 6, aggregating \$114,125.55, to be of a *special* nature and not within his jurisdiction. He held Items Nos. 2 and 3 in the amount of \$10,000 to be *general* in character and appraised the same at \$100. Claimant accepted that appraisal, and this Commission on November 12, 1943 entered an award therefor, certifying the same to the Secretary of the Treasury, as required by section 4(b) of the Settlement of Mexican Claims Act of 1942.

The items considered by Commissioner Underwood as *special*, to wit: Items Nos. 5 and 6 above, are before this Commission pursuant to the provisions of paragraph 5 of section 3(a) of the Settlement of Mexican Claims Act of 1942. The Commission finds no valid ground for disturbing the classification made of these items of claims by Commissioner Underwood. Accordingly, they are to be decided by this Commission under the Special Claims Conven-

tion of September 10, 1923 as required by the terms of the Act aforesaid.

There is some confusion by reason of varying affidavits and contentions of counsel as made originally and as asserted thereafter as to the amounts and the bases therefor as respects said Items Nos. 5 and 6. Item No. 5 represents the alleged value of livestock and other personal property taken from claimant's ranch known as La Estrella, situated in the District of Tuxtepec, State of Oaxaca, by various revolutionary forces during the years 1914-1916, and damages to coffee and rubber trees, machinery, buildings and other permanent improvements alleged to have been sustained by claimant from 1914 to 1920 by reason of the presence of such forces on the property. The item seems also to include alleged losses and damage due to the forces of General Adolph de la Huerta during the year 1923, which portion of said damages would not be cognizable as a *special* claim. While the entire item has been classified as *special* by Commissioner Underwood, only damages sustained between November 20, 1910, and May 31, 1920 are recoverable as special damages.

There is a wide variance in the allegations in the memorials and the pleadings filed by claimant and in the evidence submitted in support thereof in respect to these damages. In the Commission's opinion, however, the claimant has satisfactorily established specific losses of property in the amount of \$1,000 under circumstances imposing liability on Mexico under the Convention of September 10, 1923, in respect to the damages claimed under this item.

The claim under Item No. 6 as set out in the affidavits of claimant of date of April 30, 1936, is for: (1) loss of coffee crops, 1915-1920, \$43,750; (2) damage to coffee and rubber trees, \$65,000; (3) damage to buildings, machinery, etc., \$3,000, a total of \$111,750. However, in a later affidavit of May 8, 1937, these losses are itemized as follows: (1) loss of income from coffee trees, \$76,500; (2) loss of investment due to destruction of rubber trees, \$10,800; (3) damage to machinery and buildings, \$3,000—a total loss of \$81,300.

If the claim as made in the 1937 affidavit should be considered as a substitute for the claim asserted in the 1936 affidavit there would be no basis for this Commission to consider the item of \$65,000 as made in the affidavit of 1936 for damage to coffee trees. However, the proof is convincing that the claimant did suffer damage to coffee trees and, therefore, the Commission has not construed the latter affidavit as an abandonment of the claim as made by the prior affidavit.

With reference to the claim for loss of coffee crops or loss of profits, this Commission has heretofore held that the amount or value of any crop of coffee produced in any future year would have to depend on numerous and varied contingencies and that a claim for such future losses is too speculative and contingent to constitute a valid basis for an award therefor. (Claim of *Arbuckle Brothers*, Decision No. 18, dated May 9, 1945.) That portion of Item No. 6 comprising claim for loss of coffee crops or loss of profits in future is, therefore, disallowed. In this connection, it

may also be noted that claimant makes no showing of his gross receipts and gross expenditures as a coffee planter for any year said plantation was in operation prior to the interference of such activity by Mexican forces. Moreover, it is not shown that claimant could not have resumed the occupancy and cultivation of the property prior to May 31, 1920.

The claim for damage to coffee and rubber tree as itemized in claimant's affidavit of April 30, 1936, aggregates a total of \$63,000 for coffee trees and \$10,800 for the rubber trees. The affidavits of J. B. Buckner and D. C. Disbrow give support to the claim as to the cost of planting, care, etc., of the coffee and rubber trees. While the Commission does not consider that the evidence establishes that claimant sustained losses to the extent alleged, it is of the opinion that the same shows awardable losses under this item of claim, for which Mexican liability is shown, in the amount of \$30,000.

An award is therefore made in the total sum of \$31,000, without interest.

An application has been made by the claimant, pursuant to section 5(c) of the aforementioned Act, for determination and apportionment of fees of the firm of Turnbull & Bergh for legal services rendered with respect to this claim. Upon full consideration of the entire record, including the statement and supporting documents submitted by the above-mentioned attorneys and by claimant in connection with their services, the Commission finds that the said attorneys are justly entitled to twenty (20) per centum of the award herein, or to \$6,200.

The award of \$31,000 made herein is accordingly ordered to be distributed as follows:

To: William B. Wofford	\$24,800
Turnbull & Bergh	6,200
Total	\$31,000

DECISION No. 1-C

General Docket No. 682. Claimant: Wells Fargo Bank & Union Trust Co., (E. E. Darnielle). Amount claimed: \$32,008.57. Amount awarded: \$25,564.90.

This claim was originally in the sum of \$32,008.57 for the value of certain medical supplies alleged to have been wrongfully seized in February 1921 by the Treasury Department of the Mexican Government. It appears that the Federal District of Mexico had contracted with one Araiza on May 20, 1920 for the procurement by the latter, within a period not exceeding ninety days from said date, of a quantity of medical supplies, and had advanced him 50,000 pesos on account, the balance to be paid on delivery. He in turn had entered into an agreement with the Anglo Southern Company, a California corporation, pursuant to which the latter bought the supplies in New York City and shipped them to Mexico on order bills of lading designating the shipper as consignee. The bills of lading were endorsed, attached to a draft on Araiza in the sum of \$32,008.57 payable to Wells Fargo Nevada National Bank of San Francisco, and the draft was forwarded to the Canadian Bank of Commerce in Mexico City for presentation. Araiza failed

to honor the draft upon presentation. The Federal District sued Araiza's surety to recover the 50,000 pesos advanced on account, but the surety proved to be without funds. The record does not show whether and how this suit has been decided. The supplies were seized by an official of the Treasury Department for the benefit, as it was asserted, of the Federal District. Thereafter, on March 20, 1921, the bills were endorsed by Anglo Southern to Darnielle, whom the Wells Fargo Bank & Union Trust Co., successor to Wells Fargo Nevada National Bank of San Francisco, had designated as its nominee for the purpose of making claim to the Mexican Government and suing on same in its courts. He brought an unsuccessful suit against the Treasury Department. In 1925 the United States filed the present claim in behalf of Wells Fargo Bank & Union Trust Company to recover the amount of the draft on Araiza with interest. In 1926 the General Claims Commission permitted an amendment substituting Darnielle as claimant.

In appraising the claim Commissioner Underwood concluded that title to the supplies remained in the shipper, that Mexico was liable for the seizure, that Anglo Southern was the true claimant, and that Mexico should be credited with the 50,000 pesos advanced to Araiza. Accordingly he made an appraisal to Darnielle or Anglo Southern, as their interests should appear, in the sum of \$7,000.00 with interest from February 28, 1921, the last day of the month of seizure.

The Wells Fargo Bank & Union Trust Company petitioned for review of this appraisal, contending that it was and always had been the real party in interest, that Darnielle was its nominee, and that it was error to set off the 50,000 pesos which the Federal District had advanced Araiza. The petition was granted. Order No. 7, November 30, 1943. Thereafter petitioner asked leave to file certain additional evidence and this petition was also granted. The additional evidence, consisting of affidavits sworn by W. J. Gilstrap, Assistant Cashier of Wells Fargo, and N. B. Clarke, formerly Vice President and Director of Anglo Southern, has been received. The case now comes on to be decided pursuant to Section 4(d) of the Settlement of Mexican Claims Act of 1942.

The additional evidence tends to show that Araiza was operating independently throughout; that no part of the 50,000 pesos advanced him by the Federal District was ever applied on account of the purchase of the supplies; that actually funds for the purchase of the supplies were advanced to Anglo Southern by Wells Fargo; that Anglo Southern voluntarily liquidated its affairs and discontinued business in 1921-22; that, when it became evident to Wells Fargo that the above-mentioned draft would not be paid, it took steps to reduce the liability of Anglo Southern to it by applying the proceeds of collections and amounts carried in the current account of said company against that liability, and, on June 20, 1922 reduced the debt to \$25,564.90; that Wells Fargo's nominee Darnielle died on February 17, 1940; and that Wells Fargo is and has been the real party in interest since November 1, 1920, when it purchased the draft from Anglo Southern, said

draft being then secured by bills of lading covering the merchandise in question.

We are satisfied from the record as it is now presented that Araiza never paid anything for nor acquired any interest in the supplies. Under both New York and Mexican law ownership remained in the shipper, Anglo Southern, and had been pledged, in due course and prior to the seizure of the supplies, to Wells Fargo. Seizure of the supplies by the Department of Hacienda was clearly wrongful. Substantial interests remained unaffected by reindorsement to Darnielle for the convenience of the Mexican suit or by the substitution of Darnielle as claimant before the General Claims Commission. Since neither Anglo Southern nor Wells Fargo was at any time a principal of Araiza or a privy to the contract between him and the Federal District, the 50,000 pesos which the District advanced to him and which he appears to have dissipated may not be set off against the present claim. Wells Fargo is entitled to recover the amount which it paid for the draft on Araiza less the sum it recouped from Anglo Southern at the time of the latter's liquidation. It is entitled to interest from the date the supplies were seized.

The Wells Fargo Bank & Union Trust Co. is awarded the principal sum of \$25,564.90 with interest, as provided in Section 7 of the Settlement of Mexican Claims Act of 1942, from February 28, 1921.

DECISION No. 8-D

General Docket No. 721 (part). Special Docket No. 2236 (part). Claimant: Heirs of the Estate of M. V. Sanders. Amount claimed: \$1,875.00. Award: disallowed.

This claim, in the sum of \$1,875, is for the alleged confiscation of paper money belonging to "La Imperial, S. A.", a Mexican corporation, by the Chief of the Secret Police of Mexico City. Jurisdiction is based on section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The memorandum filed before the Special Claims Commission alleges that M. V. Sanders, during his lifetime, was a citizen of the United States, and was the owner of a majority of the capital stock of a Mexican corporation known as "La Imperial, S. A.", engaged in manufacturing confectionery in Mexico City. It further alleges that prior to his death on March 26, 1924, the corporation had been dissolved and that he had assumed all its liabilities and purchased all its assets, including the claim of the corporation against the Government of Mexico, which comprised the present claim.

This claim is set forth in the memorandum of claim as follows:

"On the 18th day of April, 1916, the Chief of Police of the City of Mexico, forcibly took and confiscated from the premises of the said corporation 25,000 pesos, face value of the bills of Chihuahua of the issue known as *Dos Caras*, \$1,875.00."

However, the actual date of the seizure appears to have been December 28, 1915.

In a letter to the Secretary of State dated April 18, 1916, M. V. Sanders sets forth the circumstances regarding the seizure of the

paper money in question, stating that the bills had been received in the store of "La Imperial" during the time immediately following the entry of the Constitutionalist forces into Mexico City in July, 1915, and before the issuance of any decree withdrawing said bills from circulation. In said letter he further states that as soon as these forces were driven out by those supporting Carranza the bills were repudiated by the Carrancistas, and later seized and confiscated by the Chief of Police who held office under authority of Carranza. There is nothing in the record concerning the loss beyond the unsupported and unsworn statement of M. V. Sanders contained in said letter of April 18, 1916.

The loss, if any, appears clearly to have been that of a Mexican corporation. No allotment from the corporation to Sanders has been presented as provided in Article I of the Special Claims Convention and there is no evidence of a legal assignment of the claim to M. V. Sanders. The claim appears to be that of a Mexican corporation and therefore not within the jurisdiction of this Commission.

The claim is accordingly disallowed.

DECISION No. 38-C

General Docket No. 755. Claimant: Frederick Cutlar Poisson. Amount claimed: \$393,958.50. Amount awarded: \$40,444.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 22 dated February 10, 1944).

The claim is based upon losses sustained by the claimant as a result of the failure of authorities of the Mexican Government to provide protection to certain agricultural property owned jointly by the claimant, an American citizen, and George H. Winterbottom, a British subject, situated in the Districts of Arizpe and Moctezuma, State of Sonora, Mexico, and upon the expropriation of a portion of the property for agrarian purposes.

The property, which comprised about 34,355 acres of land, was acquired by the claimant and Winterbottom in 1906 pursuant to a partnership agreement under which the interests of the partners were equal. By a subsequent arrangement between the partners it was agreed that the claimant should be reimbursed in full out of the first profits from the land or proceeds from the sale of the property, for sums expended by him subsequent to the year 1917 in improving and developing the property. It appears that with the exception of the maintenance of a caretaker upon the property and the payment of taxes thereon, no steps were taken by the owners prior to the year 1918 looking to the development and utilization thereof. When the claimant visited the property in 1918, he discovered that considerable portions of the land were occupied by local inhabitants to whom possession had been given by the Governor of the State of Sonora in 1916. The occupants of the land had planted crops of wheat and placed large numbers

of cattle and other livestock on the grazing areas. It appears that the area at that time being devoted to agricultural purposes was about 750 acres (300 hectares). Despite repeated efforts of the claimant to obtain possession of the occupied areas, it was not until November 1919 that he finally succeeded in having the agrarians removed. During the occupation of the property it is asserted that agrarians cut large quantities of wood therefrom which they disposed of at a great profit to themselves.

In the meantime the claimant had undertaken development of other parts of the property, employing in that connection large numbers of local workmen in clearing the land, restoring irrigation facilities, repairing buildings, planting a vineyard and orchard, constructing fences, etc. Approximately \$100,000 is alleged to have been expended by the claimant in making these improvements.

On or about September 23, 1923 provisional possession of 180.5 *hectares* of the property was given to agrarians under an expropriation decree of the Governor of the State. A Presidential decree dated June 26, 1924 modified the provisional decree by excluding the property of claimant and Winterbottom. Notwithstanding such exclusion, however, the agrarians continued in undisturbed possession under the aforesaid provisional decree until January 1928.

On November 24, 1923 provisional possession of an additional 125.17 *hectares* of land from this property was given to agrarians under a decree of the Governor. This expropriation was confirmed by Presidential decree dated October 15, 1925. Following the delivery of these lands to the agrarians it is alleged that they undertook to harass the claimant by destroying his fences, burning his buildings, preventing water from reaching his lands and even threatening his life. Appeals to the authorities for protection are said to have been of no avail. Finally, about the year 1925, the claimant was obliged to abandon his investments and leave the property, all of which, it is said, became a total loss.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that no award should be made in this case on the ground that the claimant had not established a valid interest in the property. In the opinion of this Commission such holding was erroneous. Although the original agreement for the acquisition of the property, title to which was taken in the name of Winterbottom, was apparently not reduced to writing, the record shows that within three weeks after the purchase was made the claimant remitted to Winterbottom one-half of the amount of the purchase price of the property, the receipt of which was duly acknowledged by an entry on the latter's books of account dated December 29, 1906. The record also shows that Winterbottom subsequently, on one or more occasions, acknowledged in writing the joint ownership of the property by himself and the claimant since 1906, as well as the right of the claimant to be reimbursed out of the first profits from the property or the proceeds from the

sale thereof, for expenditures made by the claimant in developing the property.

The record, in the opinion of the Commission, establishes a valid, joint-ownership interest of the claimant in the property and his right to be reimbursed for expenditures made by him under the agreement just mentioned. While the extent of such expenditures is not established by the evidence with desirable exactness, there is a sufficient showing in the record to support the amount of indemnity awarded to the claimant herein.

Items of the original claim were the following:

One-half of the reasonable rental of the property 1916-1919..	\$70,000.00
One-half of the value of the timber cut.....	15,000.00
One-half of the value of the agricultural and the grazing land rendered valueless	120,942.50
Cost of improvements placed upon the property by the claimant	122,310.00
Value of claimant's services for 5 years.....	60,000.00
Cost of obtaining repossession of the land in 1919.....	5,706.00
	393,958.50

The record does not establish that all of the aforesaid items are proper elements of a claim or that they have been proven in the amounts claimed. It appears that the land, with considerable improvements and personal property, was acquired in 1906 for approximately \$18,000. Exclusive of the improvements allegedly placed thereon, the land is evaluated by claimant at over \$240,000. The record does not support such claim of value. On the basis of the record the Commission concludes that the land actually expropriated, to-wit, 125.17 hectares, had a value of 200 pesos per hectare.

The alleged rental value of the property (\$35,000 a year) is likewise considered to be excessive. The record does not support an amount in excess of 20 pesos per hectare per year for the loss of use of the 300 hectares of land and which remained in the possession of agrarians from 1916 to 1919 inclusive. A similar allowance is made for the loss of use for a period of $4\frac{1}{3}$ years of the 180.5 hectares of land provisionally expropriated under the decree of September 23, 1923, and for the loss of use for a period of 2 years of the 125.17 hectares of which provisional possession was given to agrarians on November 24, 1923 and which was definitively expropriated by decree of October 15, 1925.

The claimant is also entitled to reimbursement for expenses incurred by him in his efforts to regain possession of the property which was wrongfully withheld from him.

The item of claim for the value of timber allegedly cut from the property by trespassers is not supported by evidence which would warrant an allowance on account of that item.

The claim that the unexpropriated land was rendered valueless is not, in the Commission's opinion, substantiated by the evidence and is disallowed.

The Commission concludes that the items of loss for which the claimant has established his right to indemnification are the following:

United States
currency

Loss of use of 300 hectares of land for 4 years (1916-1919), at 20 pesos per hectare per year, totalling 24,000 pesos, equivalent to..	\$11,964
Loss of use of 180.5 hectares of land for 4½ years (1923-1928), at 20 pesos per hectare per year, totalling 15,643 pesos, equivalent to..	7,798
Value of 125.17 hectares of land expropriated at 200 pesos a hectare, 25,034 pesos equivalent to.....	12,480
Loss of use of 125.17 hectares of land for 2 years (1923-1925), at 20 pesos per hectare per year, totalling 5,007 pesos, equivalent to.....	2,496
Expenditures incurred by claimant in 1919 in regaining possession of a part of the property.....	5,706
	40,444

Claimant is accordingly awarded the principal sum of \$40,444 with interest from dates of expropriations as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 29-D

General Docket No. 759. Special Docket No. 1249. Claimant: George W. Cook. Amount claimed: \$11,535.00. Amount awarded: \$4,567.53.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions in the amount of 23,070 pesos and was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a general claim. The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that the claim fell within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923.

At all times pertinent to the present claim the claimant, an American citizen, was the owner of a mercantile establishment in the City of Guadalajara, State of Jalisco, Mexico. It is alleged that during the period from February 15 to April 25, 1915, while the City of Guadalajara was under the control of Villa revolutionary forces, the claimant was compelled to accept in exchange for goods sold at his place of business in that city 23,070 pesos in paper currency of the issues known as Sabanas and Dos Caras bills. The original authority for the issuance of these classes of bills by the State of Chihuahua was contained in decrees of December 10, 1913 and February 10, 1914, while that State was under the control of Carranza Constitutionalist forces. The bills were required by decree issued by Carranza on February 28, 1914, to be accepted as legal tender without limitation.

Prior to September 1914, the forces of Villa and Carranza were fighting together in the revolution against the Huerta Government. Following a break in the relations between Carranza and Villa in the fall of 1914, Carranza, apparently fearing the continued issuance by Villa of the Sabanas and Dos Caras money, issued a decree on November 27, 1914, declaring that from that date bills issued by the State of Chihuahua, of which Villa was Provisional Governor, would cease to have legal circulation. The decree further provided that in due course such bills of this character as had been issued by authority of Carranza would be

exchanged for other bills but that bills issued by the so-called Conventionists (Villa) were null and void.

The State of Chihuahua, however, repudiated the authority of Carranza and continued to issue Sabanas and Dos Caras bills. Guadalajara was captured by Villa forces on December 17, 1914, but was retaken by Carranza on January 18, following. The city was again under the control of Villa forces from February 15 to April 25, 1915, it being permanently recaptured by Carranza on the latter-mentioned date. As noted above, it was during the period from February 15 to April 25, 1915, that claimant was compelled to accept the bills which are the subject of this claim.

Being unable to make use of the Sabanas and Dos Caras bills which he had on hand in Guadalajara after the Constitutionalist forces gained permanent control of that city on April 25, 1915, the claimant forwarded the bills in August of that year to his place of business in Mexico City which area was then believed to be in possession of Villa forces, with the expectation of placing them in circulation. Finding the city then in the possession of forces of Carranza, the bills were deposited in claimant's safe deposit box in a bank in Mexico City.

By a decree issued by Carranza on December 1, 1915, all holders of bills issued by the State of Chihuahua were required to deposit them with the treasury of the nation not later than December 31, 1915. Presumably for the reason that no provision was made for their redemption or exchange, claimant did not deposit the bills in his possession as required by that decree. It appears that the bills were removed from claimant's safe deposit box early in April 1916 by authorities of the Mexican Government and were not thereafter returned to him.

Claimant presents evidence from his books of account to establish that the cost of the goods for which he received 18,664.38 pesos in Sabanas and Dos Caras bills was 9,162.54 pesos. Evidence is not furnished with reference to the cost of the balance of the goods for which he received 4,405.62 pesos in paper currency, hence it is impossible to determine the extent of his losses thereon.

The claimant is entitled to compensation under the provisions of Article III of the Special Claims Convention of September 10, 1923, for the loss proved to have been sustained in connection with the forced acceptance of this currency.

In its decision in the so-called Santa Ysabel group of claims involving the status of the Villa revolutionary forces, the Special Mexican Claims Commission created under an Act of Congress of April 10, 1935, observed that:

"It is clear that up to the time of the establishment of a *de facto* government by Carranza in August, 1914, as a result of the successful revolution against the government of Huerta, the forces of Villa were to be regarded either as among the revolutionary forces which succeeded in establishing the *de facto* government or as revolutionary forces opposed to the revolutionary forces which succeeded in establishing that government. From the date of the breach between Carranza and Villa at the end of September, 1914, to the date of the establishment of a *de jure* government by

Carranza in April, 1917, the forces of Villa could be regarded as forces arising from the disjunction of revolutionary forces within the meaning of paragraph (3) of Article III of the Convention (forces arising from the disjunction of successful revolutionary forces or from the disjunction of revolutionary forces opposed to such successful revolutionary forces up to the time when the government *de jure* established itself as a result of a particular revolution). During the part of this period the forces of Villa might also be regarded as revolutionary forces which succeeded in establishing the so-called government of the Convention in November, 1914. Moreover, in view of the fact that Villa and his forces, of varying numbers, continued their opposition to Carranza from September, 1914, until Carranza's final overthrow in May, 1920, the forces of Villa could, during the whole of this period, be regarded as revolutionary forces which succeeded in establishing a *de facto* government in 1920 or as revolutionary forces opposed, in the sense of paragraph (2) of Article III, to revolutionary forces which succeeded in establishing a *de facto* government in 1920."

For reasons indicated above, the Commission concludes that the claimant is entitled to the equivalent of 9,162.54 pesos at the time of the forced acceptance of the paper currency in question, which converted at the normal rate of \$0.4985, results in the amount of \$4,567.53, United States currency.

An award is accordingly made in favor of the claimant in the amount of \$4,567.53, without interest.

DECISION No. 40-D

General Docket No. 766 (part). Special Docket No. 1276. Claimant: George W. Cook. Amount claimed: \$144.50. Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is a part of a larger claim in the amount of 10,810.05 pesos which was filed by memorandum notice with both the General and Special Claims Commissions, and which was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a general claim.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that items of claim totalling 10,521.03 pesos constituted a general claim but that no award with respect to that amount should be made. He classified the balance of the claim (289 pesos) as a special claim. No objection being made by the claimant to the action of the American Commissioner, this Commission, on August 11, 1944, entered an award on the basis of that appraisal conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. There accordingly remain for final disposition items of claim totalling 289 pesos classified by the American Commissioner as special.

These items of claim have reference to certain issues of paper currency which the claimant, an American citizen, states he was

obliged to accept in payment of goods sold by him and services rendered in the ordinary conduct of his business in Mexico during the years 1914-1916.

The currency in question is described as follows:

	Pesos
1. Bills of the Constitutionalist Government issued at Monclova, May 28, 1913.....	1.00
2. Bills of the State of Chihuahua issued under decrees of December 10, 1913 and February 10, 1914.....	131.00
3. Bills of the Constitutionalist Army issued at Guadalajara, January 20, 1915.....	12.00
4. Bills of General Pay Office, Constitutionalist Army, Guadalajara, 1914 and 1915	135.00
5. Bills of the State of Sinaloa.....	10.00
	289.00

An affidavit of one William Hansberg, claimant's manager in Mexico, dated January 15, 1931, states that

"It is, of course, not easy to trace the sources from which these different kinds of money were received; . . ."

While it appears that provision was made by the Mexican Government for the redemption or exchange of at least some of the bills in question, it is not alleged or shown that the claimant availed himself of such provision. Neither is it clearly disclosed to what extent the bills in claimant's possession may have been repudiated by the Mexican Government.

No evidence is furnished to establish the cost or value of the goods sold by the claimant or the nature or value of the services rendered in exchange for which he received the paper currency. Without evidence of the character mentioned above, there is lacking a proper basis upon which a sound conclusion might be reached regarding the extent of claimant's loss.

Since it cannot be said in these circumstances that a valid basis of liability on the part of the Mexican Government has been established, the claim must be disallowed.

DECISION No. 12-D

General Docket No. 939. Special Docket No. 608. Claimant: Lula Kimball on her own behalf and as Administratrix of the estate of J. F. Kimball, deceased. Amount claimed: \$4,000.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

It was filed by memorandum notice with both the General and Special Claims Commissions in the amount of \$4,000, and was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *general* claim.

The agents of the two Governments were of the opinion that the entire claim came within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923.

The claim was presented by memorial to the General Claims Commission solely for the determination of the question of jurisdiction and the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, classified the entire claim as *special*. The claim-

ant expressed no disagreement therewith. This Commission notified claimant of her right to present additional evidence in support of the claim under section 3(c) of the Settlement of Mexican Claims Act of 1942 but no additional evidence has been filed.

The claim appears to be predicated upon the alleged destruction by Mexican revolutionary forces in January 1914 of certain buildings and other improvements located on a tract of land belonging to J. F. Kimball within the corporate limits of the town of Nuevo Laredo in the State of Tamaulipas. It is stated that the property was under lease at the time the losses occurred. Complaint also appears to be made against the acts of the above-mentioned revolutionary forces as well as authorities of the Mexican Government who it is said permitted squatters to enter upon the land, erect homes thereon and to deprive the claimant of possession of the land.

Beyond the uncorroborated allegations of J. F. Kimball and the present claimant, the record is practically devoid of evidence essential for the founding of a valid claim. There is lacking evidence to establish the citizenship of the persons interested in the claim at any time, the ownership of the property involved, the acts complained of and the extent of the losses sustained.

For these reasons, the Commission decides that the claim must be disallowed.

DECISION No. 15-D

General Docket No. 950. Special Docket No. 947. Claimant: Walter J. MacDonald. Amount claimed: \$3,500.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the false arrest of claimant in Tiajuana, Lower California, in December 1911, the harsh treatment accorded him during an imprisonment of eighteen days, and the retention of his property by the authorities. While the fact of claimant's arrest and imprisonment upon suspicion of being a spy is undisputed, it is not shown that such action was without probable cause. In a memorandum from the Solicitor of the Department of State dated March 19, 1912 it is stated that claimant "proceeded from San Diego, California into Mexican territory with arms and ammunition, for which action he gives no excuse or reason." Furthermore, there is no sworn testimony in corroboration of the claim of harsh treatment. On the contrary, the information contained in the files tends strongly to refute such claim.

There is also no evidence regarding the value of the personal property alleged to have been taken from claimant. The record is wholly insufficient to establish a valid claim, and the Commission concludes that the same must be disallowed.

DECISION No. 53-C

General Docket No. 1004 (part). Claimant: Mary A. Savage. Amount claimed: \$5,000.00. Amount awarded: \$2,000.00.

This claim, in the sum of \$5,000.00, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously

been made by the American Commissioner designated under the General Claims Protocol of 1934 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 70 dated January 11, 1946).

The claim results from losses and damages, hereinafter described, which claimant suffered during a raid conducted by Mexicans into Texas and known as the "Nuecestown-Corpus Christi Raid of 1875." It is one of a number of claims of similar nature.

In the decision in the *Noakes* claim (General Docket No. 86, Agency No. 23, Decision No. 47, Series C), growing out of the same raid, this Commission determined that the Mexican Government is liable for losses and damages resulting from said raid. That determination of liability is applicable to the instant claim. There is sufficient evidence to establish the American nationality of claimant at all times pertinent to the claim. This Commission finds that the Mexican Government is liable for the losses sustained by claimant herein.

Claimant, her mother and another woman were traveling in Texas when they were stopped by Mexican raiders and compelled to leave their conveyance. A trunk containing their wearing apparel, jewelry and other personal effects was broken open and looted. A man was murdered in the presence of the three women and they fled into the chaparral when the attention of their captors was diverted by the burning of the *Noakes* store. There they remained in hiding, in great fear, for two days. Claimant was pregnant at the time. While claimant suffered no actual physical violence, she did endure great hardship and mental anguish and was ill as a result thereof for some time thereafter. Upon a careful consideration of the evidence adduced, it is the view of this Commission that the sum of \$2,000.00 would be fair and reasonable compensation for the damages suffered by claimant.

Accordingly, Mary A. Savage, the claimant herein, is awarded the sum of \$2,000.00 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1879.

DECISION No. 50-C

General Docket No. 1004 (part). Claimant: George W. Reynolds. Amount claimed: \$1,700.00. Amount awarded: \$1,487.00.

This claim, in the sum of \$1,700, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol of 1934 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 59 dated August 10, 1945).

The claim is predicated upon the alleged loss of personal property, physical and mental suffering, and temporary loss of liberty suffered by George W. Reynolds during a raid, conducted by Mexicans into Texas and known as the "Nuecestown-Corpus Christi Raid of 1875" and is one of a number of claims of similar nature. He died prior to the creation of the General Claims Commission, and it also appears that his widow and all of his children died before the filing of the memorial herein. For this reason, the

Commission holds that the award shall be in the name of the estate of George W. Reynolds, with such exceptions as hereinafter specified.

The nationality of the original claimant and all parties interested herein has been established in a satisfactory manner at all pertinent times, except that Joseph W. Reynolds, one of eight children of George W. Reynolds, died on March 29, 1921, and his widow, Nanny Dodson Reynolds, died less than a month later, both intestate. The one-eighth share of the claim which said Joseph W. Reynolds inherited passed by the law of descent and distribution to the two children of Joseph W. Reynolds and Nanny Dodson Reynolds, to wit: Gertrude Reynolds Rehmet and George W. Reynolds, grandchildren of the original claimant. No evidence whatever has been submitted to establish the nationality of these two descendants of the original claimant, and the memorial filed herein specifically disclaims any attempt to claim an award for their portion of the claim, which would be one-eighth of the loss sustained. Under the law, therefore, no portion of the award may be paid to these parties, nor to anyone deriving any interest in this claim from them.

The Commission finds that Mexico is liable for the losses sustained by the claimant herein for the reasons fully set forth by us in our decision in the *Noakes* claim, heretofore decided by this Commission (Decision No. 47, Series C). The *Noakes* claim was one growing out of the same raid.

As to the facts involved in this claim, it appears that George W. Reynolds was taken into custody by the Mexican raiders while he was driving his young children and another inmate of his household. He was robbed of \$9.00 in money, and other personal effects; his shoes and some other apparel were taken; he was repeatedly threatened with death; was forced to run some miles barefooted while his captors rode horses; and his team and driving rig were stolen. He was not released, but escaped from his captors. At another place his mules and a wagon were pressed into service by the same raiders. Some days later the wagon and mules were found abandoned, and he subsequently recovered his driving team of horses by the payment of \$60 to an officer of the 4th Mexican Cavalry in Mexico. The horses were in such poor condition from abuse that one of them died within a few days after recovery and the other was nearly worthless.

Considering all the evidence submitted, the Commission finds that the sum of \$1,700 claimed is fair and reasonable. Deducting one-eighth of this amount, because of the failure of said Gertrude Reynolds Rehmet and George W. Reynolds, grandchildren of original claimant, to establish American citizenship, leaves the amount of awardable damages to be \$1,487.50.

Accordingly, the estate of George W. Reynolds, original claimant herein, is awarded the sum of \$1,487.50 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1879; *provided*, however, that no portion of said award shall be paid to the said Gertrude Reynolds Rehmet or George W. Reynolds, or to anyone deriving any interest in said claim from them.

DECISION No. 51-C

General Docket No. 1004. Claimant: William A. (Joe) Ball. Amount claimed: \$750.00. Amount awarded: \$750.00.

This claim, in the sum of \$750, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol of 1934 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 59 dated August 10, 1945).

The claim is predicated upon the alleged damages, consisting of loss of personal property, loss of liberty, physical suffering and mental anguish, sustained by William A. Ball during a raid conducted by Mexicans into Texas and known as the "Nuecestown-Corpus Christi Raid of 1875," being one of several claims of similar nature.

The memorandum of claim was filed in the name of *Joe Ball*, but the memorial asked that the claimant be designated as *William A. Ball*, since the use of the name *Joe Ball* was erroneous. Said request seems to this Commission to be proper and is allowed.

The memorial was filed in the name of William A. (Joe) Ball, although it was apparent that he died prior to the filing of such memorial. His widow and three children likewise died prior to such filing. Therefore, any award must be made to the estate of William A. Ball.

The evidence submitted is sufficient to find that the parties interested in this claim were American nationals at all times pertinent hereto.

The Commission finds that Mexico is liable for the losses sustained by the original claimant herein. The history of the raid, and the reasons for finding that Mexico was liable therefor, are sufficiently discussed in the *Noakes* claim (Decision No. 47, Series C), which was based on the same raid.

The evidence discloses that William A. Ball was seized by the raiders near the Noakes store in the vicinity of Nuecestown, Texas, was threatened with death repeatedly, and while his captors were on horseback he was forced to run a considerable distance to his own home, whence his family had fled; that the house was broken into and ransacked and a small amount of personal property was stolen. Some damage to the building and contents also resulted. In addition, he lost his liberty for a short period of time, and undoubtedly suffered physically and mentally from his experience. The evidence submitted justifies a finding that the amount claimed, \$750, is a fair and reasonable amount to compensate for the entire losses sustained.

Accordingly, the estate of William A. Ball, the original claimant herein, is awarded the sum of \$750 with interest thereon, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1879.

DECISION No. 1-F

General Docket No. 1223. Claimant: North American Dredging Company of Texas. Amount claimed: \$233,523.30. Amount awarded: \$128,627.77.

This claim was presented by the United States of America to the General Claims Commission on behalf of the North American Dredging Company of Texas, an American corporation, in the amount of \$233,523.30 and interest, and was predicated on damages alleged to have been suffered by claimant as a result of the breach of a contract between claimant and the Government of Mexico, dated November 23, 1912, for the dredging of a port at Salina Cruz. The General Claims Commission dismissed the claim.

The United States of America filed a petition for rehearing with the General Claims Commission, but the term of said Commission ended before said petition was acted upon. By an amendment to the Settlement of Mexican Claims Act of 1942 this Commission was given jurisdiction over any claim decided by the General Claims Commission in which the United States filed a petition for rehearing. Thus the claim is properly before this Commission for determination.

In dismissing the claim the General Claims Commission, in a unanimous decision announced as its reason therefor that the Commission had no jurisdiction over the claim because of the presence in the contract above referred to of the so-called Calvo Clause (Provision 18 of the contract), which reads as follows:

"The contractor and all persons who, as employees or in any other capacity, may be engaged in the execution of the work under this contract either directly or indirectly, shall be considered as Mexicans in all matters within the Republic of Mexico, concerning the execution of such work and the fulfillment of this contract. They shall not claim nor shall they have, with regard to the interests and the business connected with this contract, any other rights or means to enforce the same than those granted by the laws of the Republic to Mexicans, nor shall they enjoy any other rights than those established in favor of Mexicans. They are consequently deprived of any rights as aliens, and under no conditions shall the intervention of foreign diplomatic agents be permitted, in any matter related to this contract."

The claim was presented to the General Claims Commission by the United States of America pursuant to the Convention of the United States of America and Mexico dated September 8, 1923. Said convention contained the following provisions:

ARTICLE I.

"All claims (except those arising from acts incident to the recent revolutions) against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America by citizens of Mexico, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in

which such citizens have or have had a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the Commission hereinafter referred to; and all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other since the signing of the Claims Convention concluded between the two countries July 4, 1868, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice, and equity.

ARTICLE V.

"The High Contracting Parties, being desirous of effecting an equitable settlement of the claims of their respective citizens thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim."

The General Claims Commission in its opinion dismissing claimant's claim on the ground that same is not within that Commission's jurisdiction, considered the relative effects of provision 18 of the contract, on the one hand, and Articles I and V of the Convention of September 8, 1923 on the other. The essential substance of that Commission's decision is found in the following words of the opinion:

"As the claimant voluntarily entered into a legal contract binding itself not to call as to this contract upon its government to intervene in its behalf, and as all its claim relates to this contract, and as therefore it cannot present its claim to its government for interposition or espousal before this Commission the second ground of the motion to dismiss is sustained."

(The second ground of the motion referred to is as follows: "that a contract containing the so-called Calvos Clause deprives the party subscribing said clause of the right to submit any claims connected with his contract to an international commission.")

The effect of the decision of the General Claims Commission is to hold that provision 18 of the contract between the claimant and the Government of Mexico prevails despite Article I and Article V of the Convention. With all due deference to the learned members of said Commission, we are unable to agree with the position thus taken. In our view, Article V of the Convention of September 8, 1923 is controlling as to the right of the United States Government; that pursuant thereto said Government may present this

claim on behalf of the claimant, and that this Commission has jurisdiction to decide the claim.

The situation is succinctly stated in Commissioner Nielson's dissenting opinion in the International Fisheries Company claim (General Claims Commission Opinions October, 1930-July, 1931, p. 207) wherein he comments on the decision of the General Claims Commission in the claim now under consideration, as follows:

"The Commission seemed to indicate some view to the effect that the contractual stipulations in question were in harmony with international law because they required the exhaustion of local remedies, and that therefore the claim might be rejected. The Commission ignored the effect of Article V of the Convention concluded September 8, 1923, between the United States and Mexico, stipulating that claims should not be rejected for failure to exhaust local remedies.

"The Commission found that the claim was within the language of jurisdictional provisions of the Convention but escaped the effect of that language by saying that the claimant could not "rightfully" present his claim to the Government of the United States. The claimant's right to appeal to his Government was of course determined by the law of the United States. There was no law declaring that the claimant could not "rightfully" present his claim to his Government for subsequent presentation to the Commission.

"The Commission dismissed the case nominally on jurisdictional grounds, but did not concern itself with law pertaining to jurisdiction. The Commission nullified the jurisdictional provisions of the Convention, although the claim was obviously within the language of those provisions. It likewise nullified Article V."

The General Claims Commission, in its opinion attempted to draw a distinction between a claim involving "matters connected with the execution of the work covered by the contract and the fulfillment of its contract obligations and the enforcement of its contract rights" and a claim which might arise "in the event of a denial of justice to the claimant growing out of the contract declared upon or out of any other situation." It states in its opinion that while it would have no hesitation in holding Article 18 to be void ab initio and not binding on the claimant in the latter situation above quoted, it must hold Article 18 binding on claimant as to claims involving the former situation. We see no substance to this distinction. From the standpoint of international law, an international reclamation is based upon the right of a nation to present a claim arising out of a loss or damage suffered by a private individual. That right cannot be taken away from the nation by any act of such private individual.

The proposition that the individual citizen cannot by his own contractual action deprive his Government of recourse to diplomatic remedy on his behalf finds ample support in the authorities.

This position was asserted by Secretary Stimson in response to a questionnaire sent out by the League of Nations in 1929. In response to the question "What are the conditions which must be

fulfilled when the individual concerned has contracted not to have recourse to the diplomatic remedy?" he stated:

"In general, no contract made by an individual to renounce the diplomatic remedy can have effect if its enforcement would result in any changes or modifications in the rules of international law."

So too, in a note of Secretary Kellogg to the Mexican Minister for Foreign Affairs, dated January 29, 1926, Mr. Kellogg stated this country's position to be as follows:

"Article II of the recent land law provides that any alien who may have acquired or may acquire ownership of agricultural lands, waters, and their accessories or concessions for mining or for the use of waters or for taking combustible minerals from the subsoil in the territory of the Mexican Republic shall agree before the department of foreign relations (1) to consider himself a national of Mexico in respect of his part of the property, and shall agree not to invoke in respect thereof the protection of his government with reference thereto under penalty, in case of failing in the agreement, of defaulting his property to the nation.

This conception of the rights of a nation under the rules of international law *has never been accepted by this government*, and in the past this Government has frequently notified the Mexican Government that it does not admit that one of its citizens can contract by declaration or otherwise to bind his own government not to invoke its rights under the rules of international law. Under the rules applicable to intercourse between states, an injury done by one state to a citizen of another state through a denial of justice is an injury done to the state whose national is injured. The right of his state to extend what is known as diplomatic protection can not be waived by the individual. If states by their unilateral acts or citizens by their individual acts were permitted to modify or withhold the application of the principles of international law, the body of rules established by the custom of nations as legally binding upon states would manifestly be gradually broken down.

"The right of diplomatic protection is not a personal right, but exists in favor of one state against another. It is a privilege which one state under the rules of international law can extend or withhold in behalf of one of its nationals. Whether or not one of its citizens has agreed not to invoke the protection of his government, nevertheless his government has, because the injury has been *inflicted by one state against the other*, the right to extend what is termed diplomatic protection." (Senate Doc. No. 96, 69th Cong., 1st Sess. p. 22-23)

The aforesaid principle was restated by Mr. Kellogg in a note to the Mexican Minister, dated July 31, 1926, as follows:

"The principle of international law that it is both the right and duty of a government to protect its citizens against any invasion of their rights of person or property by a foreign government, and that this right may not be contracted away

by the individual, is conceded." (Department of State, "American Property Rights in Mexico." 1926, p. 1.)

Professor Borchard states the rule as follows:

"Finally the right of the government to submit the claims of its citizens to an international tribunal, is, it may be concluded, superior to the right or competency of the individual to contract it away, for whatever the individual's power to renounce a personal right or privilege, he does not represent the government and is therefore incompetent to renounce a right, duty or privilege of the government." (Harvard Research in International Law 1929, p. 215).

After a careful consideration of the facts involved herein and the authorities applicable thereto, we are led to conclude that the provisions of clause 18 of the contract did not curtail the right of the General Claims Commission to pass upon the merits of the claim presented.

In view of the fact that this Commission holds that the right to present this claim is controlled by the provisions of Article V of the Convention of the United States and Mexico, dated September 8, 1923, there exists no reason for considering the question as to whether the claimant has exhausted legal remedies, since said Article specifically provides that no claim shall be disallowed or rejected by the Commission for failure to exhaust such legal remedies.

We are thus brought to a consideration as to the merits of the said claim.

The claim before this Commission is numbered and itemized as follows:

1. Balance due for dredging.....	\$122,286.35
2. Work stoppage by Government inspector.....	19,834.74
3. Detention of dredge and equipment from October 11, 1913 to May 27, 1914.....	74,100.00
4. Expenses of holding and caring for the dredge during such time	12,853.39
5. Detention of steamer Oliver J. Olson	2,457.40
6. Loss by abandonment of two scows	2,850.00
Total claimed	234,381.88

We shall consider the items separately.

Item 1. In the original memorial this item being the balance due for dredging done is stated to be 245,308.64 pesos (\$121,427.77 U.S. cy.). This Commission is of the opinion that the original amount of the claim may not be increased.

Item 2. This item is for alleged interruption and interference with the dredging work by the inspector for the Government, one Señor Ocampo, which interference resulted in a complete stoppage of work for $6\frac{1}{3}$ days in May, 1913, and for $11\frac{2}{3}$ days in July 1913, a total of 18 days. The total claim is based on the allegation that the average daily earnings of the dredging plant while it was in operation at Salina Cruz was \$1,101.93, making a total of the 18 days of \$19,834.74. These figures are based on Annex IV which is an affidavit of W. A. H. Connor, an accountant made on August 12, 1925, after an audit of the records and accounts of the claimant company. We cannot agree with his

calculations. The total amount claimed for actual dredging done by claimant in the period between February 17, 1913, and October 12, 1913 is 436,319.20 pesos. The number of days during said period is 235. Deducting the 18 days of shut-down leaves 217 days. This results in average gross earnings of 2,010.68 pesos per day, equivalent to \$995.28 per day, or a total of \$17,915.04 for the 18 days of idleness.

While there are other references to these stoppages, the only direct evidence regarding same is in the affidavit of Erick E. Mattson, who was superintendent in charge of the dredge. His affidavit on this point is as follows:

"From almost the very beginning of the work, as afore-said, the said Inspector in charge, Don Ocampo, gave directions to us and imposed conditions on us in the work of performing the contract, which hampered the work and made same more costly than it needed to be, and it was, at its best, very costly work to do for the reason that the bottom of the inner harbor where we were dredging was exceedingly hard and difficult to cut. For example, the said inspector in charge changed frequently the points at which we were required to discharge the dirt taken out of the bottom of the harbor and at times to points where the elevation was high and to points where for other reasons also the work of pumping the ground to the place of deposit was difficult. In the month of May the said Don Ocampo went so far as to stop the work of the dredge entirely. Orders were given to me from him to stop work and I did so. The work was stopped at this time under his orders and because of his interference, $6\frac{1}{8}$ days. Again in July, upon his orders, the dredge was compelled to stop work for $11\frac{1}{8}$ days. In both of the above instances the orders were arbitrarily given and were entirely without cause inasmuch as the work each time was proceeding properly, and in each case the work was resumed upon the receipt of orders from the Department of Communications and Public Works at Mexico City, over-ruling the orders of the said Don Ocampo and directing that the work proceed. As above stated, there was no cause for the stoppage at either of said times. At both of said times the work was entirely stopped during the days above stated, and the entire crew, and indeed all of the men employed on the work by the claimant, were compelled to remain idle so that the expense of operations for said times was a total loss."

It is our view that claimant is entitled to compensation for wrongful stoppage by arbitrary orders of the Inspector. However, we cannot agree that the measure of damages is the average daily gross earnings, considering that it is more expensive to operate such a plant than to have it remain idle even when the full crew is paid full wages. The fuel and explosives used when in operation must be taken into consideration as also the wear and tear on machinery, etc. Claimant might have furnished evidence concerning such costs but has not done so. Under the circumstances claimant may be allowed a reasonable amount

for loss of use or as demurrage for the 18 days of shut-down time. Claimant asks \$1,101.93 for each day. We find that \$400.00 per day for the 18 days during which the dredge was forced to remain idle, or a total of \$7,200.00 would represent fair compensation.

From a careful consideration of the record we find that the evidence with respect to items 3, 4, 5 and 6 are insufficient to warrant an award upon the basis thereof.

Claimant North American Dredging Company of Texas is accordingly awarded the sum of \$128,627.77, with interest from October 15, 1913.

DECISION No. 19-D

General Docket No. 1340 (part). Special Docket No. 597. Claimant: Minas Pedrazzini Gold and Silver Mining Company. Amount claimed: \$1,136.47. Amount awarded: \$1,136.47.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The entire claim in the amount of \$18,272 was filed by memorandum notice with both the General and Special Claims Commissions, and was classified in its entirety by the joint Committee created under the Special Claims Convention of April 24, 1934, as a *general* claim.

A memorial covering five separate items of claim totalling \$18,500.65 was filed with the General Claims Commission on January 17, 1936.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 classified three of the above-mentioned items as a *general* claim and made an award with respect thereto in the amount of \$10,108.89. He classified the remaining two items of claim as *special*. The claimant, having indicated no objection to the action of the American Commissioner, this Commission on November 11, 1943 entered an award on the basis of that appraisal conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942.

There accordingly remain for disposition the two items of claim classified by the American Commissioner as *special*. These items are as follows:

- | | |
|---|----------|
| 1. Value of personal property and cash taken from claimant by Maderista forces between April 23 and September 14, 1911. | \$907.72 |
| 2. Value of personal property taken from the claimant by revolutionary forces on April 15, 1915..... | 228.75 |
| | <hr/> |
| | 1,136.47 |

The claimant, an American national, incorporated under the laws of the State of Arizona, was engaged at the times pertinent to the present claim in the operation of mining properties in the District of Arizpe, State of Sonora, Mexico.

The loss of the property involved in the two items of claim here considered is established by affidavits of claimant's employees and by the sworn testimony of other persons some of whom appear to have been eyewitnesses to the taking of the property.

The values placed on the property by the claimant appear to be conservatively stated.

Liability is established under paragraph 2 of Article III of the Special Claims Convention of September 10, 1923.

An award is accordingly made in favor of the claimant in the amount of \$1,136.47, without interest.

DECISION No. 51-D

General Docket No. 1358. Special Docket No. 554. Claimant: C. C. Mengel & Brother Co., Inc. Amount claimed: \$356,420.93. Award: disallowed.

This claim, in the amount of \$356,420.93, for losses and damages due to cancellation of timber concessions, is before this Commission under section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum with both the General Claims Commission and the Special Claims Commission. It was declared to be within the jurisdiction of the General Claims Commission by the Joint Committee appointed under the Protocol of April 24, 1934, and was included with the memorial filed under Docket No. 1 with the General Claims Commission for the sole purpose of determining jurisdiction.

The American Commissioner appointed under the terms of the General Claims Protocol of 1934 considered that the claim was within the jurisdiction of the Special Claims Commission and made no determination thereof. The nationality of claimant is satisfactorily shown by the record but no evidence as to losses sustained or as to the liability of Mexico therefor has been submitted. In a letter dated February 25, 1936, claimant's attorney stated that the company had decided not to press the claim.

This Commission, therefore, directs that the claim be dismissed.

DECISION No. 52-D

General Docket No. 1359. Special Docket No. 2065. Claimant: C. C. Mengel & Bro. Co. Amount claimed: \$581,182.92. Amount awarded: \$366,136.78.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum in the amount of \$1,000,000.00 with both the General and Special Claims Commissions but was not passed upon, either as to jurisdiction or as to merits, by either of said Commissions. Memorial was filed only with the General Claims Commission, in which memorial claim was made in the amount of \$581,182.92. The claim was classified as a special claim in its entirety by Commissioner Underwood under the Protocol of April 24, 1934.

The claimant herein, the C. C. Mengel & Bro. Co., is a corporation organized under the laws of the State of Kentucky in 1903 and continued in business during all times pertinent to this claim. The Commission finds that the American nationality of claimant is sufficiently established.

The claimant was engaged for many years in the lumber and timber business and as part of such business it secured from the Mexican Government directly as well as by assignment, certain timber concessions in the Territory of Quintana Roo, Mexico, near the international line, between that territory and British

Honduras. For use in connection with its extensive enterprise claimant installed a logging railroad some 31 miles in length in that territory. On April 25, 1914, shortly after the landing at Veracruz by United States forces, certain armed Mexican forces, designated as "irregular soldiers and volunteers," seized all the properties of the claimant. Having nearly 24 hours warning, the employees of American nationality removed most of the money on hand, fled across the border into British Honduras and made their way through the jungle to the coast. About two months later the Government of Mexico agreed to return the property to claimant, but arrangements were not concluded for some time, the property being finally turned back on August 5, 1914. Claimant contends that some property had been used or destroyed and that other property had been seriously damaged in the meantime.

Shortly after the property had been returned the Mexican authorities ordered all work by claimant stopped, contending that concessions granted by the former administration required investigation. After that matter was satisfactorily determined, the local authorities refused to obey the instructions of the Federal authorities and, instead, imposed unauthorized and illegal export charges against any shipment of timber. Eventually even these difficulties were adjusted and claimant proceeded to remove the timber already prepared for shipment. Under the terms of the concession to build the aforementioned logging railroad the company was also authorized to remove such railroad, subject however to an option to purchase by the Mexican Government. Although said option had expired, the authorities refused to permit the salvage of the railroad and other improvements. Such permission was finally granted after considerable delay and claimant alleges that it suffered damage by reason thereof.

The various items of damages alleged by the claimant, hereinafter more specifically described, consisted of loss of property, damage to property afterwards returned, deterioration of the product, additional expenses incurred and loss occasioned by the investment in improvements which, due to the seizure, were not utilized to their full extent. All of the items of damage claimed herein are alleged to have been caused directly or indirectly by the seizure of the property on April 25, 1914.

This Commission is authorized to consider the claim whether the same falls within the jurisdiction of the General Claims Commission or within that of the Special Claims Commission. Nevertheless, a consideration of this jurisdictional question is necessary for the purpose of determining whether interest may be allowed on any award made. The General Claims Commission allowed interest on awards. The Special Claims Commission, however, allowed no interest, because of the fact that Mexico had assumed liability, as an act of grace. (Report of Special Claims Commission, Decision No. 1)

The attorneys for the claimant have always contended that the claim was within the jurisdiction of the Special Claims Commission. The Joint Committee created under the terms of the

Protocol of April 24, 1934, held with the American Agency that the claim was general. Mexico, however, contended that the claim was *special*. The American Agency thereafter filed a brief conceding that the losses caused by the original seizure were *special* but insisted that the items of expense after a certain date, and those losses which were occasioned by delay, were *general*. Commissioner Underwood in his opinion held that the separation of the items of loss into two categories was illogical and that the entire claim was of a special nature.

The seizure resulting in the losses claimed herein was a consequence of the attack by United States forces at Veracruz. The Special Claims Commission held that losses so caused came within its jurisdiction. (See claims of *John W. Kuntz, et al.*, Decision No. 6, p. 46; *Fred Nuffer, et al.*, Decision No. 7, p. 48; *John W. Preston, et al.*, Decision No. 9, p. 51; *Mrs. Ida B. Grimes, et al.*, Decision No. 40, p. 122, Report of Special Claims Commission.) We agree with such holding and in line therewith find that the evidence submitted is sufficient to establish that all the losses resulted from the first overt act of seizure and therefore the entire claim is within the terms of Article III of the Convention of September 10, 1923, and that Mexico is liable for the losses sustained.

The claimant has divided the items of its alleged losses into eight groups of a number of items each, which are considered by the Commission separately as the most convenient method of discussing and determining the losses sustained.

The first group, described as "property seized in April, 1914, and not returned, or returned in damaged condition in August, 1914, not including logs," consists of thirteen items. The total damages asked for said group are \$108,911.19. The figures submitted are based on estimates of damage contained in affidavits, as well as in inventories taken from the books of the claimant. The first of the thirteen items is in the amount of \$73,456.99, claimed to represent the difference between the value which the property had at the time of its seizure in April 1914 and the value of the same at the time possession thereof was returned to claimant in August 1914. The remaining twelve items, totalling \$35,454.20, represent alleged damage to certain other of claimant's properties, therein specified, as well as the cost of reconditioning the "seized property." Damages alleged are based upon the estimates as to the cost of replacing parts and the labor required to put the railroad and launches into operation and to restore roads, telephone lines and other equipment to a usable condition. Said twelve items totalling \$35,454.20 fairly represent, in the opinion of the Commission, the losses alleged and they are allowed. As to the above-noted first item of \$73,456.99, we find that the same is subject to a charge for depreciation. The property in question had been in regular use by the company for a number of years prior to its seizure yet claimant has made no allowance for natural "wear and tear." Moreover, there are included among the remaining twelve items for which allowance is made, charges for repairs to damaged property and the cost of replacing parts. Under the circumstances it seems not unreason-

able to subject the said item of \$73,456.99 to a depreciation of twenty per cent, thus reducing the amount thereof to \$58,765.59, which is hereby allowed. Said allowance added to the \$35,454.20 allowed for the other twelve items, entitles claimant to an award for the first group of a total of \$94,219.79.

The *second* group of items of loss is described as "Cost of transporting employees to Bahamas and United States during April and May, 1914." The amount, correctly computed, is \$7,230.12. The evidence submitted in support of such claim indicates that said description of the losses is somewhat inaccurate. The losses incurred represent wages paid to employees and their subsistence charges while they were being removed, costs of the trip of American employees through the jungle to British Honduras, and costs of transportation, over and above the normal rate, due to the emergency. Such items, while unusual, do not seem unreasonable under the circumstances. However, those representing the costs of transporting certain employees to the United States—specifically to New Orleans, Louisiana, and Louisville, Kentucky—do not seem to the Commission to be proper items of damage. Consequently, the amount listed in the statement containing said items, namely, \$713.85, is not allowed. Deducting said sum from \$7,230.12, the amount claimed, leaves \$6,516.27 which the Commission hereby allows.

The *third* group of items in the amount of \$256,025.87 listed by claimant is described as "Losses on Logs." The losses in this group are as follows: (1) losses on logs exclusive of those at Bacalar Lagoon; (2) losses on logs at Bacalar Lagoon; (3) losses on recovered logs due to deterioration, and (4) losses due to payment of freight on the deteriorated portion of the recovered logs. Claimant arrives at its losses by taking the cost of all the logs prior to their seizure, adding thereto all disbursements incurred after seizure, and deducting from the total sum the value of the logs which were returned. Such method of computation does not seem to us to be proper. We find that some of the items of disbursements alleged are duplicatory of disbursements claimed with reference to those items which were embraced in Group I and for which allowance has hertofore been made herein. In our view, the claim must be limited to the value of the logs which were not recovered, losses suffered through deterioration of the timber which was recovered, and freight charges incurred in connection with the exportation of the deteriorated portion of the logs. As to the claim for deterioration, claimant contends that the logs which were recovered by it depreciated in value to the extent of 35 percent and that the amount of such depreciation is a proper item of its loss. A further claim is made for the return of 35 percent of the freight charges incurred by claimant in connection with the exportation of the timber. This latter item of claim is predicated upon the fact that claimant was required to pay freight charges for transporting partly deteriorated logs in order that it might salvage the marketable portion thereof. We will consider first the value of the logs themselves before passing to the question as to the claim for deterioration and freight charges. Claimant contends

that 8,120 logs were in Mexican territory, exclusive of those at Bacalar Lagoon, and that these logs, at that time, represented an expenditure of \$87,607.95. Said sum comprises all items of expense, including the interest on investment as well as office expense outside of Mexico. Each log, therefore, represented a cost of approximately \$10.78. Of the 8,120 logs the company succeeded in removing 6,797 logs, leaving 1,323 logs which were not recovered. At the value of \$10.78 per log this represents a loss of \$14,261.94 on the logs, exclusive of those at Bacalar. As to the logs at Bacalar, claimant's reports indicate, in terms of board feet, that 1,665 logs were salvaged from the logs at Bacalar. These reports further show that this number of logs represents approximately 29 per cent of the entire lumber in the bush and in the lagoon before seizure. Applying said percentage figure, it would appear that there was a total of 5,741 logs at Bacalar at the time of the seizure. Deducting therefrom the 1,665 logs, representing the 29 per cent of salvage, as aforesaid, leaves a balance of 4,076 logs lost to claimant because of the seizure. At \$10.78 per log this loss amounts to \$43,939.28. This sum, added to the sum of \$14,261.94, representing the loss on logs above mentioned, makes a total of \$58,201.22 for all logs lost. Allowance, therefore, is hereby made to claimant of said sum of \$58,201.22.

As to the claim that losses on the logs due to deterioration should be computed as 35 per cent of their value, this percentage is based on affidavits of two witnesses who estimate that the boring of worms and tropical insects, during the time that the logs were left, would cause deterioration estimated at 20 to 35 percent. The affidavits are somewhat vague, and do not include a statement that the logs in question were actually inspected. Nor does the claimant give any figures showing the extent of actual deterioration, although many detailed figures are submitted as evidence. The estimates are based on logs left in water not affected by a current or by the tides, and it is doubtful if all the logs in question were in that category. Moreover, the estimate of 35 percent is based on neglect of at least a year. This estimate does not appear to be properly applicable to a large portion of the logs in question, since, according to the log reports submitted by claimant, more than 2,000 logs were carried out before the end of 1914. Upon consideration of all these factors, the Commission concludes that the estimate made by claimant is too high. In its opinion, an estimate of 25 per cent would more fairly represent the extent to which the logs in question deteriorated. The value of the logs recovered, plus the amount of the freight paid on the logs to Louisville, Kentucky, totals \$293,695.25, of which 25 percent would amount to \$73,423.81. This sum added to the amount representing the value of the logs lost by claimant (\$58,201.22) makes a total of \$131,625.03, representing the losses sustained by claimant on logs listed in Group III.

Claimant contends in the *fourth* group of its items of claim that it sustained a \$30,726.72 loss in "Expenditures on trees not converted into logs." Of this amount \$23,045.04 is said to represent labor while \$7,681.68 is listed as camp and office expenses.

the latter item being estimated as one-third of the total of such charges in the claimant's books. The first item of \$23,045.04, the costs of locating and cutting down trees, and building roads, is considered by the Commission to be legitimate expense and is properly chargeable to the Mexican Government. The second item, representing camp and office expenses, is not considered by the Commission to be meritorious, since, according to the memorial, overhead costs had already been charged against the logs and were thus included in other damages for which allowance has been made. Furthermore, no reasonable basis is shown for the charge of overhead in the amount of $33\frac{1}{3}$ percent of the total of the expenditures on trees not converted into logs. Therefore, the second item of \$7,681.68 is disallowed. The Commission finds that the losses in this group of items are \$23,045.04.

The *fifth* group of items is described as "Partial Amortization of railroad and other permanents," which claimant alleges amounted to \$131,525.19. This sum is said to represent one-half of the cost of the railroad and permanent improvements, less the value of those improvements which were salvaged. Claimant bases its claim to one-half of said costs upon the contention that it was able to remove approximately only one-half of its exploitable timber. With this estimate the Commission cannot agree. It appears that 14,186,488 feet of timber were available for exploitation and that 3,155,115 feet were hauled by the railroad in 1913. In addition, 5,772,627 feet were hauled by the railroad during 1914, 1915 and 1916, making a total of 8,927,742 feet. It thus appears that approximately 37 percent of the exploitable timber was not recovered and in the opinion of the Commission only said percentage of the investment in the railroad and permanent improvements represents a proper charge against Mexico. It further appears from the record, as is hereinafter shown, that claimant has not given a sufficient credit for the value of certain of the property which was salvaged. The record shows that the value of the railroad and rolling stock, according to claimant's books, is \$294,125.59. Against this there has been credited by claimant \$56,693.18 for the salvage of the rolling stock and \$14,580 for the salvage of rails. The credit of \$56,693.18 is correct. The credit for the salvage of the rails, however, clearly appears to be insufficient. Claimant concedes that the value of the rails salvaged was \$43,740 but deducts therefrom the sum of \$29,160, representing the estimated freight charges for transporting them to New Orleans, Louisiana, thus reducing the credit to \$14,580 as aforesaid. In the absence of any showing that it was necessary to ship the rails in question to New Orleans, no justification appears to exist for claimant's deduction of said freight charges from the amount of the salvage; to wit, \$43,740. We therefore hold that the amount of salvage is \$100,433.18, representing the aforesaid sum of \$56,693.18 for the rolling stock and \$43,740 for the rails. Deducting said sum of \$100,433.18 from \$294,125.59, the value of the railroad and rolling stock, as shown by claimant's books, leaves a balance of \$193,692.41. Thirty-seven percent of said amount which we hold to be chargeable against Mexico, as aforesaid, is \$71,666.19. Other permanent

improvements are valued by the claimant at \$40,197.79. The Commission holds that claimant is likewise entitled to 37 percent of said amount, or \$14,873.18. Said sum added to the aforementioned sum of \$71,666.19 makes a total of \$86,539.37, which the Commission finds to be a fair and reasonable charge for amortization.

As the *sixth* group of items claimant sets forth "Expenses of the Company's Belize Branch from May, 1916 to April, 1917," amounting to \$33,644.51. The evidence does establish that some of the costs of such operation were caused by the refusal of the Mexican Government to permit removal of the railroad, although the terms of the concession clearly gave claimant such right. It would therefore appear that such expenses constitute a proper charge against Mexico. In view of the meager evidence submitted, however, it is necessary to resort to an estimate as the proper charge. In the circumstances the Commission holds 33 $\frac{1}{3}$ percent of the expenses of maintaining such branch to be a proper charge. This amounts to \$11,214.84.

Claimant's *seventh* group of items is for \$12,976.44, being "Expenditures of the head office at Louisville in efforts to protect the company's property against acts of the Mexican authorities." The evidence satisfactorily shows that these expenses were caused by the failure of local Mexican authorities to obey instructions of the Mexican Federal Government for the return of the property to claimant, and by causing claimant certain unreasonable delays in exercising its legal rights. The Commission holds that expenses of this nature are proper. The items are approved in the amounts claimed, to wit: \$12,976.44.

Claimant has designated its *eighth* group as "interest" on any award made. This item is disallowed, in pursuance of the decision of the Special Claims Commission to which reference has heretofore been made.

In summary, the Commission finds that the proper allowances for losses by groups are as follows:

Group 1	\$94,219.79
Group 2	6,516.27
Group 3	131,625.03
Group 4	23,045.04
Group 5	86,539.37
Group 6	11,214.84
Group 7	12,976.44
Group 8	None
	366,136.78

The claim of claimant C. C. Mengel and Bro. Co. is therefore allowed in the sum of \$366,136.78, without interest.

An application having been made by Fred K. Nielsen, attorney for claimant, pursuant to section 5 (c) of the Settlement of Mexican Claims Act of 1942, for determination of a just and reasonable attorney's fee, and said application being supported by the sworn statement of said attorney as to services rendered and by correspondence between him and claimant indicating an agreement between them upon a fee for such services of ten percent of any sum awarded, and it appearing to this Commission

from the entire record that such allowance is just and reasonable, said application is hereby granted.

Accordingly the Commission hereby makes the following awards:

To C. C. Mengel and Bro. Co., claimant.....	\$329,523.10
To Fred K. Nielson, attorney.....	36,613.68

both of said awards to be without interest.

DECISION No. 59-C

General Docket No. 1875. Claimant: James F. Scott. Amount claimed: \$281,100.00. Amount awarded: \$39,375.00.

This claim, in the amount of \$281,100.00, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been previously made by the American Commissioner designated under the General Claims Protocol of April 24, 1934, between the United States and Mexico, and a review of that appraisal having been granted by this Commission. This is one of a large number of claims commonly known as Texas Cattle Claims. The general principles involved in the determination of said Texas Cattle Claims were announced and applied by the Commission in its decision in the claim of Helen Ruby Hall, Executrix of the Estate of William S. Hall, Deceased (Decision No. 57, Series C). The principles therein announced are equally applicable here. All the factors essential in establishing liability and loss in a so-called "cattle claim" which we discussed at length in said decision have been fully considered by us in connection with the instant claim.

The American nationality of all the present claimants and their predecessors in interest is established by satisfactory proof.

After examining the evidence in this case and considering all the relevant factors which are fully set forth in said Decision No. 57, the Commission finds that the above-named claimant suffered losses of cattle within the period of the jurisdiction of this Commission, for which losses Mexico is liable, of a value of \$39,375.00.

Mr. Harold N. Marsh, one of the attorneys in this case, has filed a request for the determination of attorneys fees herein. Mr. Marsh presented this claim before the General Claims Commission beginning in 1926, and he also presented the claim before this Commission. Since Mrs. Robert R. Savage, who has a one-fourth interest in this award, was represented by her husband acting as her counsel, her portion of the award amounting to the principal sum of \$9,843.75 is not affected by the award made to Attorney Marsh herein. The Commission finds that an award to Mr. Marsh of 20% of the balance of \$29,531.25 of the total amount of the award would represent fair and just compensation for his services.

The Commission therefore awards a total sum of \$39,375.00, with interest from January 1, 1879, as provided by Section 7 of the Settlement of Mexican Claims Act of 1942:

To Mrs. Robert R. Savage.....	\$9,843.75
To John R. Scott, individually.....	11,812.50
To John R. Scott and Sarah M. Gocher, as trustees, for the benefit of Clara Scott.....	11,812.50
To Harold N. Marsh, Attorney.....	5,906.25

DECISION No. 60-C

General Docket No. 1377. Claimant: Archie Clark. Amount claimed: \$1,066,660.00. Amount awarded: \$150,941.00.

This claim, in the amount of \$1,066,660.00, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been previously made by the American Commissioner designated under the General Claims Protocol of April 24, 1934, between the United States and Mexico, and a review of that appraisal having been granted by this Commission. This is one of a large number of claims commonly known as Texas Cattle Claims. The general principles involved in the determination of said Texas Cattle Claims were announced and applied by the Commission in its decision in the claim of Helen Ruby Hall, Executrix of the Estate of William S. Hall, Deceased (Decision No. 57, Series C). The principles therein announced are equally applicable here. All the factors essential in establishing liability and loss in a so-called "cattle claim" which we discussed at length in said decision have been fully considered by us in connection with the instant claim.

The American nationality of all the present claimants and their predecessors in interest is established by satisfactory proof.

After examining the evidence in this case and considering all the relevant factors which are set forth in said Decision No. 57, the Commission finds that the above-named claimant suffered losses of cattle within the period of jurisdiction of this Commission, for which losses Mexico is liable, of a value of \$150,941.00.

Mr. Harold N. Marsh and Mr. B. C. Clark, attorneys in this case, have filed a request for the determination of attorneys fees in the amount of 25 percent of the award. These attorneys presented this claim before the General Claims Commission beginning in 1926, and also before this Commission. The Commission finds that there are such special circumstances as to justify an award for attorneys fees in this case of 25 percent of the total amount of the award, of which two-thirds shall be paid to Mr. Harold N. Marsh and one-third to Mr. B. C. Clark.

The Commission accordingly awards a total sum of \$150,941.00 with interest from January 1, 1879, as provided by Section 7 of the Settlement of Mexican Claims Act of 1942:

To The Estate of Archie Clark.....	\$113,205.75
To Harold N. Marsh, Attorney.....	25,156.83
To B. C. Clark, Attorney.....	12,578.42

DECISION No. 54-C

General Docket No. 1899. Claimant: Next of Kin of John Jordan. Amount claimed: \$25,000.00. Amount awarded: \$10,000.00.

This claim, in the amount of \$25,000.00, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol of 1934 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 60, dated August 10, 1945).

The claim, memorialized in the name of the next of kin of John Jordan, is predicated upon the loss sustained by reason of the murder of said John Jordan by Indians, domiciled in Mexico, who conducted a raid into Texas, the death occurring on April 18, 1878.

The Commission finds that the evidence submitted is sufficient to establish the American nationality of John J. Jordan, and the parties interested in the claim at all times pertinent thereto.

The raid, organized in Mexico, was conducted by a band of Kickapoo and Lipan Indians, and there is some evidence tending to show that some Mexicans and Seminole Indians also participated. The raid was one of a long series of similar ones, the band crossing the Rio Grande on April 14, 1878, sweeping over a large area and returning, closely pursued by aroused Texans, on April 19, 1878. Many people were killed during the raid, the band slaying anyone who might spread the alarm, and rounding up horses which were driven into Mexico.

The evidence clearly establishes that John Jordan was killed by Indians from Mexico; that this, as well as other raids, was organized in Mexico with at least the tacit consent of the Mexican authorities; that property stolen on such raids was freely bought and sold in Mexico with the knowledge of authorities; that Mexico did not take any action either to prevent the raids or to punish the raiders; that Mexican State authorities interfered with attempts of the United States Government to return Indians back to United States reservations; that in this particular raid the returning Indians traveled freely with the spoils over Mexican roads and that in a quarrel over the spoils, the Lipan and Kickapoo Indians engaged in a fight on Mexican soil, some Indians being killed and six Lipan Indians being turned over by the Kickapoos to Mexican authorities. They apparently made no effort to punish the raiders. Many of these facts were admitted by the Foreign Office in Mexico.

This raid, occurring at that time and being one of a long and continuous series of similar raids, creates Mexican liability under the principles enunciated in the General Opinion of this Commission dated December 30, 1944.

Upon the question of damages we find that John Jordan was a young man of 19 years at the time of his death and that he was unmarried. He died intestate. He was doing a man's work at that time and place, helping to build up a family enterprise consisting of an extensive cattle ranch, and his life expectancy was considerable. At the time the claim accrued, his father and mother would have been entitled to recover damages resulting from his death but they died long before the memorial was filed. The heirs of his brothers and sister are therefore proper claimants herein.

Under the evidence submitted, this Commission finds that an award of \$10,000.00 would be a fair and reasonable compensation for the loss sustained.

Accordingly, the claimants herein are awarded the sum of \$10,000.00 without interest, said sum to be divided so as to award \$2,500.00 each to his sister and brothers or their heirs, as follows:

Richard Jordan, Jr.
 Samuel Joseph Jordan
 Frederick Jordan
 Caroline Jordan Knaggs

DECISION No. 39-C

General Docket No. 1915. Claimants: Alfred L. Shapleigh, Charles P. C'Fallon, William G. O'Fallon, John J. O'Fallon, Jr., Caroline O'Fallon Miller, John A. Peck, Rebecca Peck Dusenbery, Belle Peck Bryant, Elizabeth P. Peck, Max M. Bryant, Charles Davis, Jr., James Lamar Davis, Alice Davis Wise, Margaret C. Lytle. Amount claimed: \$322,046.45. Amount awarded: \$96,727.60.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 20, dated February 5, 1944).

The claim arises out of the expropriation by authorities of the Mexican Government in 1925 of 48,924.75 hectares of land bordering on the Rio Grande River in the District of Morelos, State of Chihuahua, Mexico. This area, which included three adjoining tracts, was purchased on or about February 13, 1897, by Alfred L. Shapleigh, John J. O'Fallon, Thomas Ranken, Jr., Charles H. Peck and Charles Davis. The interests thus acquired were in the following proportions:

Alfred L. Shapleigh	157/1250
John J. O'Fallon	314/1250
Thomas Ranken, Jr.	380/1250
Charles H. Peck	152/1250
Charles Davis	247/1250

Claimants John A. Peck, Rebecca Peck Dusenbery, Bell Peck Bryant, Max M. Bryant and Elizabeth P. Peck were designated as trustees under the will of Charles H. Peck, deceased; the other claimants, with the exception of Alfred L. Shapleigh, are successors in interest of the other original purchasers of the property.

The claim presented to the General Claims Commission was formulated on the following basis:

	Pesos
1,200.00 hectares of land at 220 pesos per hectare.....	264,000.00
4,400.00 hectares of land at 60 pesos per hectare.....	264,000.00
29,443.38 hectares of land at 3 pesos per hectare.....	88,330.15
13,881.37 hectares of land at 2 pesos per hectare.....	27,762.74
48,924.75	644,092.89

This sum was said to be equivalent to \$322,046.45, United States currency, in which amount claim was made.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, in appraising the claim, classified and evaluated the land as follows:

1,200 hectares at \$40.00 per hectare	\$48,000
4,400 hectares at \$10.00 per hectare	44,000
43,324 hectares at \$.50 per hectare	21,662

113.662

The Commissioner considered that the American citizenship of the persons who succeeded to the interest in the property (152/1250) formerly held by Charles H. Peck had not been proven and he accordingly made no appraisal with respect to that interest. For the same reason he made no appraisal with reference to the *one-third* interest of Alice Davis Wise in the portion of the claim derived through the estate of Charles Davis (247/1250). He held the interest of Margaret C. Lytle in the claim to be established only to the extent of a $1/30$ part of the 380/1250 interest in the property formerly owned by Thomas Ranken, Jr.

Commissioner Underwood's appraisal is assailed in claimants' petition for review because of his elimination of the Peck interest and *one-third* of the Davis interest, his alleged incorrect computation of the interest of Margaret Church Lytle (one of the Ranken heirs), and because the values placed upon the land are deemed to be inadequate.

This Commission, pursuant to the provisions of section 4 (d) of the Settlement of Mexican Claims Act of 1942, has received additional evidence bearing upon the citizenship of a number of the claimants and their interests in the claim.

The effect of this additional evidence, together with that previously filed, appears to this Commission to remove any doubt as to the American citizenship of the successors in interest of Charles H. Peck or as to that of Alice Davis Wise, one of the three heirs of Charles Davis.

The Commission is further of the opinion that the ownership interest of Margaret Church Lytle in the claim derived through Thomas Ranken, Jr., and his successors in interest, is satisfactorily established to the extent of 11/120 of 380/1250.

The values placed by the claimants upon the several classes of land involved are based upon an appraisal of the property made by Manuel L. Cardona, a Mexican engineer, who was employed by one of the claimants for that purpose in 1922.

In addition there is an affidavit of Alfred L. Shapleigh to the effect that the land was originally acquired by himself and associates for the purpose of raising cattle; that for several years following its purchase large numbers of cattle were pastured thereon; that some time later, due to changes in the tariff laws, the owners discontinued their cattle business and thereafter leased the land to Mexican citizens. No information is furnished regarding the income derived from the property at any time. Neither is there disclosed the amount of the consideration paid by Shapleigh and his associates for the property in 1897.

In a communication dated November 24, 1925, from the Acting Treasurer General of the State of Chihuahua, which is included in the evidence filed by the Mexican Government, it is stated that the value of the property for tax purposes in 1924, including the Santisima tract, involved in Docket No. 3084, was 112,043 pesos, but that the writer considered the real value of the entire 89,704 hectares to be 450,000 pesos.

The evidence which has been furnished does not in the opinion of this Commission justify the classifications of the land and the

values thereof as urged by the claimants. Engineer Cardona concedes that on account of lack of roads and other means of communication, the property is not readily accessible to markets or to other than small centers of population. Moreover, the witness Cardona describes considerable areas of the land as pasture lands of only medium quality.

On the basis of the evidence adduced, this Commission concludes that the fair and reasonable per hectare values of the several classes of land involved herein, are as follows:

	Pesos
1,200.00 hectares of cleared land at 60 pesos per hectare.....	72,000.00
4,400.00 hectares of uncleared tillable land at 25 pesos per hectare	110,000.00
43,324.75 hectares of pasture land at 2 pesos per hectare.....	86,649.50
48,924.75	268,649.50

This sum is equivalent at the rate of exchange (\$0.4974) applicable at the time of expropriation to \$133,626.26, United States currency.

An award is accordingly made in this case with reference to the interests of the respective claimants in the amount of \$96,727.60 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from March 5, 1925, as follows:

To Alfred L. Shapleigh 157/1250 of \$133,626.26 or.....	\$16,783.46
To Charles P. O'Fallon $\frac{1}{2}$ of 314/1250 of \$133,626.26 or.....	11,188.97
To William G. O'Fallon $\frac{1}{2}$ of 314/1250 of \$133,626.26 or.....	5,594.49
To John J. O'Fallon, Jr. $\frac{1}{2}$ of 314/1250 of \$133,626.26 or.....	5,594.49
To Caroline O'Fallon Miller $\frac{1}{2}$ of 314/1250 of \$133,626.26 or....	11,188.97
To Charles Davis, Jr., James Lamar Davis, and Alice Davis Wise, in equal shares, 247/1250 of \$133,626.26 or.....	26,404.55
To Margaret C. Lytle 11/120 of 380/1250 of \$133,626.26 or.....	3,723.72
To John A. Peck, Rebecca Peck Dusenbery, Belle Peck Bryant, Elizabeth P. Peck and Max M. Bryant, or their successors, as Trustees under the will of Charles H. Peck 152/1250 of \$133,626.26 or	16,248.95
Total award	96,727.60

DECISION No. 34-D

General Docket No. 1918 (part). Special Docket No. 666 (part). Claimant: Herbert R. Cornforth. Amount claimed: \$5,967.35. Award: disallowed.

This claim for \$5,967.35 is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It represents the face value (11,934.70 pesos) of certain paper currency allegedly received by the claimant, an American citizen, in payment of goods sold and for services rendered by him in the conduct of a drug store and electrical shop in the City of Guadalajara, State of Jalisco, Mexico, during the years 1913-1916.

This item was considered by the American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, to constitute a special claim.

The currency in question is described as follows:

	Pesos
1. State of Chihuahua (Villa), December 10, 1913.....	386.00
2. State of Chihuahua, February 10, 1914.....	10,221.50

	Pesos
3. Provisional Government of Mexico, revalidated by Conventionist Government, December 17, 1914.....	311.00
4. Mexican Republic, Division of the Bravo (Huerta forces)....	6.00
5. Constitutionalist Government, Monclova, May 28, 1913.....	126.00
6. Constitutionalist Army, Chihuahua, March 30, 1914.....	57.00
7. Constitutionalist Army, Western Division, Guadalajara, January 20, 1915.....	554.00
8. Northwestern Army Corps, Guadalajara, August 1, 1914 and May 1, 1915.....	247.50
9. Brigade Caballero, Tampico, June 6, 1914.....	1.00
10. Brigade Sinaloa, Mazatlan, August 21, 1914.....	1.00
11. Constitutional Army of the North, Torreon.....	1.00
12. Constitutionalist Army	.05
13. State of Sonora, August 27, 1913.....	17.45
14. Columna Galvez Toscana	5.20
Total	11,934.70

In an affidavit dated April 27, 1929, claimant stated:

"It is impossible for me or anyone else who was in business during these times to give the valuation in gold or silver for these bills, nor the value of the merchandise in the rate of the value of the bills in purchasing power, as many goods were sold daily and the rates continued changing. Most all kinds of paper money issued during the revolutionary times was *more or less* forced upon us by parties then in power."

In a subsequent affidavit of October 8, 1930, claimant furnished the following information:

"The said bills, while still in my hands, were repudiated or virtually repudiated by the said authorities. The provisions made for the so-called redemption of some of these bills were so inadequate as to be absurd and unreasonable and I did not take advantage of such so-called redemption."

Specific evidence as to which of the several issues of currency here involved were repudiated and which were redeemable or subject to exchange for other issues is not before the Commission. Claimant admits that he did not avail himself of such opportunity as was open to him to redeem the currency in his possession. Neither is there before the Commission evidence with respect to the cost or value of the goods sold by the claimant or with reference to the nature or value of the services rendered in exchange for which he received the paper currency.

A proper basis of liability has not been established. In these circumstances the claim must be disallowed.

DECISION No. 13-D

General Docket No. 1991 (part). Special Docket No. 1248 (part). Claimant: Lluvia de Oro Gold Mining Company. Amount claimed: \$1,500.00. Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The entire claim in the amount of \$330,821.20 was filed by memorandum notice with both the General and Special Claims Commissions.

Items of claim totalling \$292,831.89 were classified by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *special* claim and that portion of the claim was dis-

posed of by the Special Mexican Claims Commission established under an Act of Congress approved April 10, 1935. The remaining items of claim, totalling \$37,989.31 were classified by the Joint Committee as *general*.

A memorial relating to one of the items of claim classified as *general* (\$1,500) was filed with the General Claim Commission for determination on the sole question of jurisdiction. The other items of claim classified as *general* appear to have been abandoned by the claimant government.

Of the total amount of the claim classified as *general*, the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that items totalling \$36,489.31 constitute a *general* claim but that no award with respect thereto should be made for lack of prosecution. He classified the remaining item of claim (\$1,500) as a *special* claim.

No objection having been made by the claimant to the action of the American Commissioner, this Commission on August 11, 1944, entered an award on the basis of that appraisal conformably to the provisions of section 4(c) of the Settlement of Mexican Claims Act of 1942.

There accordingly remains for disposition only the item of \$1,500 classified by the American Commissioner as *special*.

With respect to this item it is alleged that the amount of 3,000 pesos was paid by the claimant on May 20, 1913 to one Major Tomas Estrada in San Blas, State of Sinaloa, as consideration for permitting the claimant to ship its bullion and concentrates over the lines of the K. C. M. and O. railroad. It is said that a receipt for this payment was given by Major Estrada with the understanding that this amount might be applied to the payment of federal taxes, but that the receipt was not accepted when presented for that purpose.

The receipt is not presented in evidence and it is indicated that it has probably been lost. No details other than those mentioned above in connection with the circumstances under which the receipt was given are furnished. Major Estrada's official status at the time of this transaction is not disclosed and he is not shown to be either a member of a revolutionary force or a federal officer.

Upon the entire record, the Commission concludes that this item of claim has not been established in a satisfactory manner.

It accordingly decides that the claim must be disallowed.

DECISION No. 16-D

General Docket No. 1997 (part). Special Docket No. 1207 (part). Claimant: Nacozari Railroad Company. Amount claimed: \$131,565.14. Amount awarded: \$40,000.00.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The entire claim in the amount of \$419,497.58 was filed by memorandum notice with both the General and Special Claims Commissions.

Items of claim totalling \$287,932.44 were classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a *special* claim and that portion of the claim was disposed of by the Special Mexican Claims Commission established under an Act of Congress approved April 10, 1935. The remaining items of claim totalling \$131,565.14 were classified by the Joint Committee as *general*.

A memorial in the amount of \$131,444.76, covering the seven separate items of claim enumerated below, was filed with the General Claims Commission on January 21, 1936:

1. Trains supplied for the transportation of federal troops (September 3, 1912 to November 18, 1912)	\$8,850.00
2. Trains supplied for the transportation of federal troops (February and March, 1913)	1,050.00
3. Trains supplied for the transportation of Constitutionalist troops (February 26, 1913 to November 6, 1916)	72,750.00
4. Work trains used in the repair of bridges destroyed by Constitutional authorities (February 28, 1913 to December 14, 1915)	4,950.00
5. Freight and passengers transported pursuant to orders of the Mexican Government (1915 to 1924)	6,497.94
6. Trains used in repairing damage caused by Crozeo forces (September 5, 1912 to July 25, 1914)	13,196.82
7. Trains used in the transportation of troops in the Villa-Maytorena faction and in the repair of damages caused by such faction (November 11, 1914 to November 15, 1916)	24,150.00

Total, United States currency 131,444.76

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 classified a portion of Item 5 (\$4,169.72), which accrued after May 31, 1920 (the limit of the jurisdiction of the Special Claims Commission), as a *general* claim and made an appraisal thereof in that amount. The claimant having expressed its agreement with the appraisal of the American Commissioner, this Commission on November 11, 1943, entered an award on the basis of that appraisal conformably to the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. There accordingly remain for disposition by this Commission items of claim totalling \$127,275.04 classified by the American Commissioner as *special*.

The claimant, an American national, at all times pertinent to the present claim, owned and operated a standard gauge railroad which extended from the international boundary between the United States and Mexico to the town of Nacozari in the State of Sonora, a distance of about 76 miles. During the revolutionary period from 1910 to 1920 and subsequently, the operations of the claimant's property were subjected to interference by various revolutionary and federal forces operating in that area. On numerous occasions the claimant was required by those forces to furnish locomotives and trains for the use of the latter, to furnish transportation for troops and to employ its equipment in the repair of bridges destroyed by the revolutionary and federal forces.

All of the losses here involved are shown to have been caused

by the acts of forces enumerated in Article III of the Special Claims Convention of September 10, 1923.

The claim is made for services so rendered at the rate of 300 pesos a day for each locomotive or work train. Usual tariff rates are claimed for passenger transportation furnished by the claimant. The basis of the 300 pesos a day charge is not explained. At one place in the record (Mem., Annex A, p. 118), it is indicated that a charge of only 20 pesos a day was made for locomotives and 90 centavos per day for freight cars.

In the evidence presented in support of the claim all amounts are stated in terms of Mexican currency (pesos) converted at the rate of 2 to 1. Claimant contends that the legal tender in Mexico during the period when the claim arose was either currency issued by duly authorized government banks or Mexican gold coin, the peso being worth 50 cents, United States currency. It must be remembered, however, that numerous classes of depreciated currency were in circulation in Mexico during the years 1913 to 1916. These were subject to wide fluctuation in value. Moreover, the record contains no showing that the amounts due claimant could not have been liquidated by payment in the currency then in circulation. In the absence of such showing the Commission finds no proper basis for converting peso amounts into United States currency at the normal rate of exchange.

Giving due consideration to all the evidence as to the value of the service for which claim is made and to the monetary situation existing at the time the claim arose, the Commission concludes that the sum of \$40,000 would fairly and adequately indemnify claimant for its loss.

Accordingly, the claimant is awarded the sum of \$40,000. without interest.

DECISION No. 39-D

General Docket No. 2020 (part). Special Docket No. 1763. Claimant: Apolonio G. Lopez, et al. Amount claimed: \$24,799.97. Amount awarded: \$549.22.

There was originally filed by memorandum notice with both the General and Special Claims Commissions claim in the amount of \$55,000.

The claim arose out of the alleged seizure and operation by the Carranza forces in 1914 of a ferry operated across the Rio Grande River between the Mexican town of Ciudad Mier in the State of Tamaulipas, and the town of Roma in the State of Texas. These forces are alleged to have continued the operation of this ferry until 1918, when they turned it over to the civil authorities of Ciudad Mier. It is claimed that the latter-mentioned authorities thereafter refused to return the ferry equipment to claimants or to permit them to operate a ferry.

The portion of the claim based on the seizure of the ferry by military forces in 1914, and its operation by them until it was turned over to civil authorities of Ciudad Mier in 1918, was classified by Commissioner Underwood as *special*, and is before this Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. The remainder of the claim classified by Commissioner Underwood to be *general*

was found by him to be entitled to no award. His appraisal to that effect was not objected to by the claimants, and this Commission on August 11, 1944, entered an award conformable to the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942.

There accordingly remains for adjudication by this Commission that portion of the claim classified by the American Commissioner as *special* in the sum of \$24,799.97.

The items making up said amount are as follows:

Loss of use of ferry from February 6, 1914, to June 1918, 4½ years at \$5,000.....	\$21,666.60
Boats taken by Carranza.....	1,200.00
3,866.74 pesos turned over to the civil authorities of Ciudad Mier by Carranza in 1918.....	1,933.37
	24,799.97

(NOTE: The correct amount of the last item, as shown by Annex 26 to the memorial, appears to be 3,876.64 pesos or \$1,938.32.)

It is established that the Carranza forces seized this ferry equipment in 1914; that they retained possession thereof and operated the ferry until 1918 when they turned the same over to the civil authorities of Ciudad Mier. It is also shown that this equipment was not returned to its owners.

It seems clear that the claimants sustained some losses and that liability of the Mexican Government therefor exists under the provisions of paragraph 2 of Article III of the Special Claims Convention of September 10, 1923. It is impossible, however, upon the proof filed to determine with exactness the extent of such losses. The proof adduced falls far short of establishing a net income from the operation of the ferry of \$5,000 a year as alleged. Considering all the evidence in the record, the Commission considers that the losses may properly be computed at \$1,938.32, this being the sum actually shown to have been earned from the operation of the business during the period in which the revolutionary forces were in charge. This amount was turned over to the civil authorities of Ciudad Mier by the Carranza forces in 1918, when they relinquished possession of the ferry equipment and its operation.

The Commission is also of the opinion that Mexican liability exists for the value of the ferry equipment which was not returned. The estimate of \$1,200 placed thereon by the claimants as its value is deemed to be fair and reasonable.

The sum of these two items of loss, to-wit, \$1,938.32 and \$1,200, makes a total of \$3,138.32. The award must be distributed to claimants according to their respective interests.

The ferry equipment and the operation of same as a ferry business under legal license was originally the property of Gregorio Gomez, who died in 1895. The business was thereafter conducted by the five children of Gregorio Gomez, one of whom was Juan Gomez, who succeeded to a one-fifth interest in the equipment and business. Juan Gomez is shown to have died in 1902, and following his death the ferry was operated, until seized by the Carranza forces, on behalf of the heirs of Gregorio Gomez and of Juan Gomez.

Juan Gomez was survived by his wife and eight children, who succeeded to Juan's one-fifth interest in the ferry equipment and business. The widow of Juan Gomez died prior to the filing of the memorial. One of his daughters is shown to be a Mexican national. The only proper claimants herein are therefore the remaining seven children of Juan Gomez, all of whom are shown to be American citizens. As their father (son of Gregorio) owned a one-fifth interest, these seven of the eight children of Juan are held to own a seven-fortieths interest in the total losses. Seven-fortieths of the total loss of \$3,138.32 is \$549.22, which is hereby awarded, without interest,—the claimants, Apolonio Gomez Lopez, Jose Maria Gomez Lopez, Gregorio Gomez Lopez, Magdalena Gomez Lopez Pena, Dominga Gomez Lopez Falcon, Anselmo Gomez Lopez, and Andrea Gomez Lopez Garcia, each being awarded the sum of \$78.46.

DECISION No. 24-C

DECISION No. 6-D

General Docket No. 2124 (part). Special Docket No. 2486 (part). Claimant: Charles Frederick Parraga and Rafael E. Parraga. Amount claimed: \$1,864,200.00. Amount awarded: \$243,000.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 36 dated June 20, 1944). The special part of the claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the aforesaid Act.

The entire claim was filed by memorandum with both the General Claims Commission established under the Convention of September 8, 1923, and the Special Claims Commission created pursuant to the Convention of September 10, 1923, between the United States and Mexico.

The Joint Committee created pursuant to Article V of the Convention of April 24, 1934, concluded that the entire claim was within the jurisdiction of the General Claims Commission.

On May 18, 1931, the claimant government filed with the General Claims Commission a memorial in the amount of \$2,342,200. One of the items included in that memorial was in the amount of 480,000 pesos said to represent damages sustained by claimants as a result of the loss of use of their salt mines for six years (1911-1917) at 80,000 pesos a year.

On April 6, 1936, the claimant government filed a second memorial with the General Claims Commission for the purpose of correcting the above-mentioned conclusion of the Joint Committee by having items of the claim totaling \$478,000, United States currency, declared to be within the jurisdiction of the Special Claims Commission. Of this latter amount \$75,000 was said to represent the value of 5,000 tons of salt taken by revolutionary forces in 1910, and \$3,000 allegedly represented the value of 12 warehouses burned by federal forces in 1912. These two items of claim were not included in the first memorial.

The balance of the amount of \$478,000 claimed in the second memorial included the same damages stated in the first memorial for the years 1913 to 1917, namely, \$160,000, and \$240,000 for the year 1911-1912 instead of \$40,000 as claimed in the first memorial.

In the event the General Claims Commissioners should decide that the items of claim included in the second memorial were within the jurisdiction of the Special Claims Commission, the claimant government requested that the amount claimed in the first memorial be reduced by \$240,000.

The respondent government, in its answer to the second memorial, conceded that the claim made therein in the amount of \$478,000 was within the jurisdiction of the Special Claims Commission.

In his above-mentioned appraisal, Commissioner Underwood concluded that the claim to the extent of \$478,000 is special and that the balance of the claim in the amount of \$1,864,200 is within the jurisdiction of the General Claims Commission but that no award with respect to the latter should be made.

In the light of the claims made in the two memorials, as noted above, it would appear that the total amount of the general claim was \$2,102,200 instead of \$1,864,200 as stated in the appraisal.

The facts underlying the claim are:

By a deed of November 14, 1843, the Government of Mexico conveyed to Javier Echeverria the salt mines of Tehuantepec situated in the State of Oaxaca, Mexico, for the sum of 249,588 pesos. The grantor guaranteed that "the titles shall forever be certain, sure, and effective." Quiet possession was also guaranteed in the deed of conveyance. In 1902 the claimants and Lorenzo Martorell formed a partnership in Mexico under the firm name of Parraga Brothers and Company. All of the capital of the firm was contributed by the claimants. Martorell was to receive a salary of \$166.66 a month and 10 percent of the annual net income. The partnership continued until October 23, 1912, when it was reorganized. Thereafter only the claimants retained an interest therein. By an allotment executed in 1925 the claim is allotted in a one-half interest to each of the two brothers.

By a contract of sale of April 29, 1904, the heirs of Javier Echeverria conveyed the above-mentioned salt mines to Parraga Brothers and Company for a stated consideration of 400,000 pesos. At the time of executing that deed the vendors acknowledged the receipt from the purchasers of 60,000 pesos in cash and the balance of the purchase price was to be paid in annual installments, the last of which was due on October 29, 1908. The sellers retained a mortgage on the property for the unpaid portion of the purchase price. For reasons unexplained it appears that, with the exception of the 25,000 peso installment due on October 29, 1904, the remaining portion of the purchase price was never paid.

It is asserted that during the years 1904 to 1907 the claimants had made certain improvements on the property including the construction of warehouses, office buildings, canals, dwellings for

workmen, railroad, an aero cable for the transportation of salt, etc.

It is further alleged that during the year 1908 the claimants leased the salt beds for a period of three years to a group of Mexican bankers for an annual consideration of 80,000 pesos, the lease including an option to purchase the property; and that by reason of interference by individuals and by representatives of the Mexican Government, and because of the failure of the Mexican Government to make effective its warranty of peaceful possession of the property, the lessees did not exercise the option to purchase and that the property was returned to the claimants in 1911.

Claimants assert that after the return of the property in 1911 they endeavored to resume operation thereof but were prevented from doing so by reason of the failure of the Mexican Government to provide protection against the acts of private individuals, as well as those of the local authorities.

Following the adoption of the Mexican Constitution of 1917, which provided that ownership of salt beds created directly by the water of the sea was vested in the nation, the President of Mexico, on February 21, 1918, issued a decree the effect of which was to throw open the claimants' property for the exploitation of anyone who might request that privilege. The property rights of the claimants were destroyed by that decree.

Liability on the part of the Mexican Government is thus predicated upon its breach of the warranty of peaceful possession contained in the original grant made to Echeverria in 1843, and upon the expropriation of the property.

It appears that in 1918 the claimants undertook direct negotiations with the Mexican Government looking to the payment of indemnity for the lands. While the Mexican Government, during the course of these negotiations, apparently did not contest claimants' ownership of the property in question, an agreement for settlement was not concluded.

As noted above, Commissioner Underwood rejected the portion of the claim which he classified as a general claim. In reaching that conclusion the Commissioner stated that, notwithstanding the acknowledgment by the vendors in the deed of conveyance of April 29, 1904, of the receipt from the purchasers of 60,000 pesos in cash, he was not convinced that any payment on account of the purchase price of the property had ever been made by the claimants; and that the claimants being in default in the payment of installments of the purchase price they thereby "lost all right to the property," so that as far as the record showed they had no interest therein at the time of the acts complained of. The Commissioner further stated that he considered the real claimants to be the members of the Echeverria family and that he attached no importance to the negotiations for payment conducted by the claimants with the Mexican Government in 1918 and subsequently.

The damages claimed in the first memorial in the amount of \$2,342,200 were computed as follows:

	Pesos
Loss of the use of the Salinas of Tehuantepec and Juchitan from 1911 to 1917 (six years at 80,000 pesos per year)	480,000.00
Value of salt beds of Tehuantepec and Juchitan as of May 1, 1917	1,600,000.00
Interest on value of Salinas for 14 years	1,408,000.00
Estimated cost of collecting this claim (30 percent of 3,488,000 pesos to be later adjusted to 30 percent of entire amount awarded by the Commission including interest)	1,046,400.00
Costs of negotiating proposed friendly settlement in 1918	150,000.00
	4,684,400.00

Or 2,342,200.00 gold currency of the United States.

As noted above, the claimant government, in its second memorial, requested that the first of the above-mentioned items, i.e., 480,000 pesos or \$240,000, United States currency, be deducted from the total amount of \$2,342,200 in the event the amount claimed in the second memorial (\$478,000) should be determined to be a special claim. Both governments having agreed that the claim made in the second memorial is classifiable as a special claim, this Commission sees no error in that conclusion. It results that the total amount of the general claim is \$2,102,200.

The deed of April 29, 1904 provides that in the event of a default in the payment of a single installment of the purchase price, or of the payment of two monthly installments of interest charges, the vendors could declare the contract rescinded in which event the purchasers would lose all right to the property as well as forfeit all installments made up to the time of default in case such installments had not reached the total amount of 160,000 pesos.

The Commission is of the opinion that the failure of the purchasers to pay an installment of the purchase price when due was not sufficient in itself, under these provisions of the contract, to effect a forfeiture of claimants' interest in the property. Such a failure simply gave to the vendors an option, in the circumstances mentioned, to regard the contract as rescinded should they so desire. That they never elected to exercise that option is shown by the fact that in 1911 the vendors brought proceedings against the claimants to foreclose the mortgage which they retained on the property. Proceedings in two courts upheld the mortgage. Subsequent proceedings with reference to the mortgage were discontinued upon mutual agreement of the parties. It also appears that the mortgagees renounced all their rights under their mortgage, reserving their personal rights of action against the claimants for "a quantity of money fixed by common accord . . ."

In support of the aforesaid items of claim which it is asserted are general, claimants refer to Exhibits 5, 11 and 27 filed with the first memorial. The next to the last item of claim, namely, that for 1,046,400 pesos, estimated cost of collecting claim, is based upon a provision in the above-mentioned deed of November 14, 1843 to the effect that in the event the vendee or his "heirs and assigns" should be deprived of the property, he (or they) would be entitled to be paid the "costs, damages [and] expenses" resulting from such deprivation.

Exhibit 5 is a petition addressed to the Department of State by the claimants under date of June 13, 1925, setting forth their

estimate of the losses which they claimed to have sustained up to the year 1926.

Exhibit 11 is a statement by Ignacio Olmedo, formerly an attorney of Javier Echeverria, before the American Vice Consul in Mexico City, with reference to the leasing of the property by the claimants from 1908 to 1911 at an annual rental of 80,000 pesos.

Exhibit 27 is a copy of the proposed agreement for settlement between the claimants and the Mexican Government with respect to which negotiations were conducted in 1918.

The additional evidence bearing upon the question of damages, which the Commission authorized the claimants to file pursuant to the provisions of section 4(d) of the aforesaid Act of 1942, consists, in the main, of a number of photographs of the property and a record of sales of salt made during the period from June 1905 to May 1906.

Beyond the uncorroborated statements of the claimants, there is no evidence before the Commission to substantiate the last two items of claim mentioned above. In these circumstances the Commission does not regard those items as established.

As to the second item of the claim (1,600,000 pesos, value of salt beds), the additional evidence indicates that about 4,800 tons of salt were sold from the property during the year 1905-1906. It is said the salt had a "net value" of 15.57 pesos per ton. It is not clear whether this latter figure is intended to represent the net profit. Evidence filed by the Mexican Government is to the effect that profits from the operation of salt beds in this area ranged from 4 to 8 pesos per ton. Without more complete information than is provided by this record concerning the potential earning capacity of the property during the period antedating the year 1917, it would not be practicable to determine to what extent sales of salt for a single year could be regarded as indicative of the value of the land.

Likewise, the facts concerning the alleged leasing of the property for the period 1908 to 1911 are not disclosed with sufficient clarity and completeness to justify their being used as a basis for determination of the value of the said salt beds. So too, the Commission does not regard the negotiations conducted in 1918 as reflecting the value of claimants' property. Evidently the extent of the consideration contemplated in the proposed settlement was a matter of considerable uncertainty and, as noted above, no agreement for settlement was concluded.

In the light of the very unsatisfactory condition of the record bearing upon the reasonable value of the property in 1917 the Commission regards the purchase price of the land in 1904, namely, 400,000 pesos, as more indicative of that value than any other evidence which claimants have presented. For that reason, it fixes the value of the property as of the date of its expropriation at that figure.

While the record leaves much to be desired with reference to the extent of the area of which the claimants were deprived as a result of the promulgation of the Mexican Constitution of 1917 and the subsequent Presidential decree of February 21, 1918, it

is not shown that any lands not comprehended by those acts of expropriation had any substantial value.

The Commission accordingly awards to the claimants the sum of \$200,000 with reference to the general claim.

The Special Claim

The portion of the claim which the two governments have agreed is special comprises the following items:

1. The value of 5,000 tons of salt taken by the revolutionary forces of Jose G. Gomez (Che) in December 1910.....	\$75,000
2. The value of 12 warehouses burned by federal forces in 1912..	8,000
3. Loss of 20,000 tons of salt as a result of the activities of revolutionary and federal forces in 1912.....	240,000
4. Loss due to the inability to operate the property during 1913 and 1914, owing to revolutionary conditions	80,000
5. Losses sustained during 1915 and 1916 by reason of the confiscation of the property in 1915 by the Constitutionalist General, Luis Felipe Dominguez	80,000
Total, United States currency	478,000

With reference to the first of these items, the brief of the claimant government asserts that these losses "were caused by *revolutionary forces* under Gomez in December, 1910, as an incident of the revolution." No attempt is made in the brief to classify the Gomez forces under any of the categories of forces enumerated in Article III of the Special Claims Convention of September 10, 1923. In a memorandum filed with the Commission on March 29, 1944, by claimants' attorney, it is asserted that the Gomez forces were insurrectionary forces within the meaning of category 5 of Article III, and liability is said to be established on the ground that the Mexican Government extended amnesty to the followers of Gomez. The memorandum refers to a despatch of November 20, 1911, from the American Consul at Salina Cruz to the Department of State, in which the Consul stated:

"I have the honor to report that the troubles in and around Juchitan, Oaxaca, are now in the process of adjustment.

"There has been a cessation of all hostilities, and it seems to be the opinion of those well informed that the people will put aside their arms, and return to their homes in consideration of amnesty be granted them and their right to be consulted in the choice of a Jefe Politico (Prefect) recognized." (Memorial No. 2, Annex 12.)

The information furnished by the Consul cannot be accepted as establishing the allegation that amnesty was, in fact, granted. The Commission is unable to conclude from the evidence before it that a basis of liability under Article III of the Convention of September 10, 1923, with respect to this item of claim, is established.

It is proper to note in this connection that apart from the question of international responsibility, considerable doubt exists as to claimants' ownership of the 5,000 tons of salt allegedly taken in December 1910. This item does not appear to be included in the enumeration of losses made in claimants' petition to the Department of State in 1925. Neither does the evidence filed in sup-

port thereof appear to contain any specific allegation of ownership on the part of the claimants. The salt beds were apparently under lease at the time the loss is alleged to have occurred and for aught that appears in the record might have belonged to the lessees.

The evidence filed in support of the second item of the special claim appears to establish in a satisfactory manner that twelve buildings belonging to the claimants were destroyed by federal forces in 1911 or 1912. While the evidence as to the value of these buildings is somewhat meager, the Commission feels that an award with reference to this item in the amount claimed, namely, \$3,000, may properly be made.

With respect to the losses comprehended by the third and fourth items of this claim and covering the period 1912 to 1915, the Commission does not find in this record evidence which would warrant it in concluding that these losses were caused by forces for whose acts the Mexican Government assumed liability under Article III of the Convention of September 10, 1923. Accordingly, no allowance is made therefor.

As to the fifth item, it appears that under date of April 22, 1915, orders were issued under the authority of General Carranza which had the effect of excluding claimants from the operation of their property. While it does not appear that claimants were thereafter permitted access to the property, no claim appears to be made for loss of use subsequent to 1916. On the basis of the showing made with respect to this item of claim, it is considered that the claimants are entitled to an allowance for the loss of the use of their property for the year 1915-1916. While it is difficult to determine the earning capacity of the salt beds at any time with any degree of exactness, the Commission concludes that an allowance of \$40,000 may properly be made with reference to this item.

Accordingly, the claimants are awarded \$200,000 upon the general claim with interest thereon as provided in section 7 of the aforesaid Act, from February 21, 1918, and \$43,000 upon the special claim, without interest.

DECISION No. 36-B

DECISION No. 17-D

General Docket No. 2183 (part). Special Docket No. 2548 (part).
Claimant: Singer Sewing Machine Company. Amount claimed: \$19,034.01.
Amount awarded: \$9,393.56.

The present claim in the amount of \$20,266.28 comprises one of the items of a much larger claim which was filed on behalf of this claimant by memorandum notice with both the General and Special Claims Commissions. The amount of the item was stated in the memoranda notices as \$20,266.77, and it was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a *general* claim.

In a memorial filed on March 28, 1936 with the General Claims Commission, the claim was broken down into the following enumerated items:

1. Losses due to the acts of revolutionary authorities under the command of Cheche Campos.....	\$58.00
2. Losses due to the acts of revolutionary authorities on February 12, 1913	600.00
3. Losses due to the acts of revolutionary authorities in April 1913	11,042.00
4. Losses due to the acts of revolutionary authorities on June 27, 1913	684.93
5. Losses due to the failure of the railroad company to deliver the claimant's property in June 1913	79.27
6. Losses due to the damage to the claimant's property while in transit in June 1913.....	47.28
7. Losses due to the failure of the railroad company to deliver one machine which was lost in transit in July 1913.....	58.00
8. Losses due to the acts of revolutionary authorities under the command of Magaleno Cedillo, on July 18, 1913.....	176.99
9. Losses due to acts of revolutionary authorities under the command of V. Carranza on October 23, 1913.....	100.77
10. Losses due to the failure of the railroad company to deliver one machine which was lost in transit in September 1913.....	63.33
11. Losses due to acts of revolutionary authorities "force majeure"	72.50
12. Losses due to acts of revolutionary authorities under the command of Carranza, on October 23, 1913.....	960.00
13. Losses due to the acts of revolutionary authorities under the command of Aguilar on October 23, 1914.....	1,960.00
14. Losses due to the acts of revolutionary authorities between September 30, 1913 and January 13, 1914.....	1,165.45
15. Losses due to the acts of Villista revolutionary authorities..	52.00
16. Losses due to the acts of Villista revolutionary authorities..	52.00
17. Losses due to the acts of Villista revolutionary authorities..	100.00
18. Losses due to the failure of the Constitutionalist Railways of Mexico to deliver the shipment in due course.....	363.76
19. Losses due to the acts of Zapatista revolutionary authorities..	58.00
20. Losses due to the acts of Villista revolutionary authorities..	264.00
21. Losses due to the acts of Zapatista revolutionary authorities on August 9, 1916	100.00
22. Losses due to the acts of revolutionary authorities on March 13, 1917	925.00
23. Losses due to the acts of revolutionary authorities on April 9, 1919	1,208.00
24. Losses due to the acts of revolutionary forces under the command of V. Carranza, May 13, 1920.....	75.00
Total losses	20,266.28

In the American brief, the claimant government announced that it "desists from further prosecution" of Items 5, 6, 7, 10, 18 and part of Item 14 mentioned above for the reason that the evidence does not establish either that such losses were due to acts of forces enumerated in Article III of the Special Claims Convention of September 10, 1923, or liability on the part of the Mexican Government under the terms of the General Claims Convention of September 8, 1923. The total amount of the items which thus in effect were withdrawn by the claimant government is \$1,232.27.

The Agents of both Governments requested the General Claims Commissioners to classify the remaining items of the claim totaling \$19,034.01 as a *special* claim.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, classified the items of claim withdrawn by the claimant government (\$1,232.27) as a *general* claim but held that

that portion of the claim should be disallowed for lack of prosecution. The other items of claim he classified as *special*.

The claimant has filed a petition for review of that portion of the American Commissioner's appraisal of the claim which disallowed the part classified as *general* (\$1,232.27) for lack of prosecution. While claimant concedes that that part of the claim is *general*, it contends that the American Commissioner was not bound by the decision of the American Agent not to prosecute those items and that he "failed in his duty" in not considering such items on their merit.

The very broad authority possessed by a government over claims of its nationals which have been placed in its hands for interposition with another government is too well known and recognized to require any detailed discussion. It is sufficient to note that its authority in that respect is practically without limitation. (Borchard, *Diplomatic Protection of Citizens Abroad*, pp. 357-358, 366) Governments must, of course, act through their duly authorized agents. If the American Agent in the general claims arbitration, pursuant to his authority, determined not to prosecute a particular claim or to withdraw it at any stage of the proceedings, this Commission will not question such action. Neither do we consider it to be within the competence of the American Commissioner designated under the General Claims Protocol of April 24, 1934 to ignore such action of the American Agent. Aside from these considerations, it may be observed that an examination of the evidence relating to the *general* items of claim amply supports the conclusion of the American Agent expressed in the brief that such evidence does not establish a basis of liability on the part of the Mexican Government under the General Claims Convention of September 8, 1923. The Commission accordingly concludes that claimant's petition for review is without merit.

There remain for consideration items of claim totalling \$19,034.01, which are properly classified as *special*, and which are before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The claimant, an American national, at all times pertinent to the present claim, was engaged in the business of selling and leasing sewing machines, accessories thereto and other property in Mexico. In that connection it had established various agencies and places of business in different parts of that country. The losses involved in the instant claim are alleged to have resulted from damage to or destruction of property of the claimant while the same was in the custody of the National Railways of Mexico, the Constitutionalist Railways of Mexico, the Wells Fargo and Company Express, S. A., the Constitutionalist Express of Mexico, and the Mexican Express Company, S. A., for delivery to consignees. Other items of property are alleged to have been lost while in the custody of those agencies. The losses are attributed to acts of various revolutionary forces and authorities which it appears derailed cars of the carrier roads, set fire thereto in some instances, seized articles of claimant's property and committed

other acts of depredation which caused the losses for which claim is made.

The Commission finds that with respect to Items 11, 15, 16, 19, 21, 22 and the part of Item 14 held to be *special*, in the total amount of \$1,804.32, the evidence is insufficient to warrant the granting of any indemnity therefor.

The remaining items of claim in the total amount of \$17,229.69 represent losses which are shown to have been occasioned by the acts of forces enumerated in Article III of the Special Claims Convention of September 10, 1923. However, the values placed by the claimant upon the various articles of property involved therein are deemed excessive. It may be noted that in a number of instances such values represent the retail selling price of the articles rather than their reasonable value at the time of loss. Moreover, while it is a matter of historical knowledge that the value of Mexican currency in circulation during the period when the losses in question occurred fluctuated widely, claimant nevertheless, in computing its claim, converts peso values into United States currency at approximately the normal rate of exchange.

All of the foregoing are factors which cannot be excluded in determining the amount of indemnity to which the claimant is entitled. Giving due consideration to these and other relevant matters appearing in the record, the Commission finds that claimant is entitled to an award of \$9,393.56 without interest, on the basis of the evidence which has been furnished.

Accordingly, the sum of \$9,393.56 is hereby awarded to claimant.

DECISION No. 39-B

DECISION No. 48-D

General Docket No. 2183 (part). Special Docket No. 2548 (part). Claimant: Singer Sewing Machine Company. Amount claimed: \$2,085,-064.72. Amount awarded: \$192.55.

The portion of this claim which is the subject of the present decision is before this Commission pursuant to the provisions of section 3 (a) (5) and section 4 of the Settlement of Mexican Claims Act of 1942. The claim was filed by memorandum notice with the General Claims Commission in the amount of \$2,525,-251.56, and with the Special Claims Commission in the amount of \$2,530,895.25. The items of loss enumerated in the notice of claim filed with the Special Claims Commission were the following:

1. Loss of property between November 20, 1910 and September 18, 1911	\$3,003.27
2. Loss of property from 1913 to 1920	393,987.00
3. Loss of property shipped over lines of the National Railways	20,266.77
4. Non-payment of postal money orders	15,636.70
5. Non-payment of draft and letter of credit, State of Sonora	181.50
6. Refusal to redeem tickets issued by Comision Reguladora	7,110.70
7. Loss due to forced acceptance of paper currency	2,005,879.00
8. Loss through delivery of certain issues of paper money under decree of December 1, 1915	62,038.62
9. Loss through inability of claimant to exchange paper money and bonds	6,969.25
10. Refusal of Government of Mexico to redeem paper money called in by it	10,177.85
11. Forced loans	5,644.59
	2,530,895.25

The same items, with the exception of Item 11, were included in the notice of claim filed with the General Claims Commission.

Item 4 mentioned above was disposed of by a decision of the General Claims Commission.

The remaining items of claim were classified as follows by the Joint Committee created under the Special Claims Convention of April 24, 1934:

Item	Special	Item	General
1.....	\$3,003.27	3.....	\$20,266.77
2.....	393,987.00	5.....	181.50
11.....	5,644.59	6.....	7,110.70
		7.....	2,005,879.00
	402,634.86	8.....	62,038.62
		9.....	6,969.25
		10.....	10,177.85
			2,112,623.69

The items classified by the Joint Committee as special (\$402,634.86) were disposed of by the Special Mexican Claims Commission created under an Act of Congress approved April 10, 1935.

Items 3, 5 and 6, mentioned above, were presented to the General Claims Commission in separate memorials and have been finally disposed of.

Items 7, 8, 9 and 10 are, therefore, the only ones that require consideration by this Commission.

A portion of Item 8, namely, \$31,450.57, and a portion of Item 10, namely, \$100, were also memorialized separately and presented to the General Claims Commission with Docket No. 1876.

The balance of Item 8 not so memorialized, namely, \$30,588.05, and the balance of Item 10, namely, \$10,077.85, together with Items 7 and 9, in the total amount of \$2,053,514.15, were presented by memorial to the General Claims Commission solely to determine the question of jurisdiction.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that of the total amount of \$2,053,514.15 for which claim was made in the latter-mentioned memorial, only one item amounting to \$17,466.50, fell within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923. The balance of that item, in the amount of \$2,036,047.65, was classified by him as general but appraised as entitled to no award.

With respect to that portion of this claim (parts of Items 8 and 10) filed with Docket No. 1876, as noted above, involving items totalling \$31,550.57, the American Commissioner held that one item in the amount of \$22,027 was within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923, and that the balance of that portion of the claim was of a *general* nature. He made an appraisal with reference to the item held to be general in the total amount of \$172.36.

In its petition for review of the above-mentioned appraisals,

claimant, while objecting to the action of the American Commissioner in classifying any part of this claim as general, states at the same time that "the jurisdictional question from the point of view of the claimant is immaterial." In the light of the very distinct difference in the bases of liability fixed by the Convention of September 8, 1923 and that of September 10, 1923, claimant's position in that respect would appear to be untenable.

The circumstances surrounding the losses involved in Item 7 of the claim (\$2,005,879) are described in a memorandum prepared by the claimant in 1925 as follows:

"In the years 1913, 1914, 1915 and 1916, the *de facto* governments of Mexico, particularly that of Venustiano Carranza, issued large quantities of paper money. Among the decrees providing for such issuance were those of April 26, 1913, December 28, 1913, February 28, 1914, March 3, 1914, September 19, 1914, June 18, 1915, July 21, 1915, April 3, 1916 and April 28, 1916. Under all of these decrees, the paper money was declared to be legal tender, and arrest and punishment were threatened for all who refused to accept same.

"The Singer Sewing Machine Company, under the duress of the *de facto* authorities, was compelled to accept this paper money in payment of the instalments due to it on the machines that had been previously sold. The paper money so received was as rapidly as possible sold and the proceeds remitted to the main office of the Company in New York. In the years 1913, 1914, 1915, and 1916, the loss on such remittances aggregated \$1,005,879, being the difference between the par or face value in gold or silver of the paper money thus received and the actual value thereof as shown by the sale of the paper money upon making such remittances. In addition to the amount thus lost, the Singer Sewing Machine Company still had accounts receivable due to it from sales made prior to the issuance of paper money or sales made under contracts which specifically provided for the payment of instalments in gold or silver pesos of the value fixed by the Monetary Law of May 25, 1905, aggregating 3,016,158.82 pesos, which, by the decree of law of September 15, 1916, were reduced to a value of approximately 829,443.68 pesos, involving a further loss to the Company of approximately \$1,000,000. The total loss due to the depreciated currency during the said years therefore aggregated \$2,005,877."

It is to be noted from the foregoing that, except in a general way, the particular issues of currency involved are not described with any degree of particularity. It is therefore impossible to identify with certainty the forces or governments responsible for the issuance and circulation of the currency in question. In commenting upon this testimony, the American Commissioner stated in his appraisal:

"It seems evident that the American Agent has presented this particular claim under an all-embracing hypothesis that currency depreciation may be determined special without

the necessity of connecting it with the acts of particular forces; but if this be his view I do not agree with it."

We see no error in this holding.

In the opinion of this Commission, the failure of the claimant to establish with greater precision the identity of the forces responsible for the alleged forced acceptance of this currency precludes a finding that this item of claim meets the requirements for liability set out in Article III of the Convention of September 10, 1923. Even were it shown that the losses allegedly sustained by the claimant in this connection were due to acts of forces enumerated in that Article, there is not before the Commission evidence upon which it would be possible to determine the extent of such loss. The record contains no satisfactory evidence regarding the value or cost of the goods sold by the claimant in exchange for which it received the currency in question. The same is true with respect to losses allegedly resulting from the application of the so-called Law of Payments of September 15, 1916. This Commission has heretofore held that the application of the Law of Payments does not give rise to a valid claim under the General Claims Convention of September 8, 1923. (Claim of *Scott and Bowne, Inc.*, Docket No. 2378, Decision No. 1, Series B, and claim of *Borden Covel*, Docket No. 2775, Decision No. 25, Series B.)

With further reference to the question of liability under the General Claims Convention of September 8, 1923, based upon the action of a government in depreciating its currency, the American Commissioner, in his appraisal of the claim of *Quimichis Colony*, Docket No. 668 (part), stated as follows:

"Now, coming to the matter of the General claim, I may say that there is no precedent in international law cited by the present American Agent for holding a Government responsible for the depreciation of its currency. However, in these currency claims the present American Agent does not make any such contention, so we do not have that issue here; but I am merely calling attention to the circumstance that there does not seem to be a single precedent in the long history of currency debacles which would support such a view; so I take the position that under international law, unless the claim is modified by circumstances which give it the support of some other principle, no government is responsible for the mere depreciation of its currency. Such a calamity is a general one affecting nationals and resident foreigners alike. No Government desires that its currency be depreciated to the point of extinction in value or nearly so. It is unquestionably to a government's interest to strive as vigorously as it can to preserve the value of its money and the national credit; but unhappily it has sometimes happened that entire series of issues have become worthless, or nearly so; but never, so far as I know, has any such claim been made and sustained in an international arbitration on such account."

We find no reason in the instant case for departing from the conclusion thus expressed by the American Commissioner.

As noted above, part of Item 8 of the claim, namely, \$30,588.05, was presented by memorial to the General Claims Commission solely for the purpose of determining the question of jurisdiction. Another part of said item, namely, \$31,450.57, was included in a separate memorial with Docket No. 1876. The circumstances surrounding this loss are stated as follows by the claimant:

"Under the decree issued from the Department of Finance and Public Credit, December 1, 1915, certain issues of paper money were called in and holders thereof were directed to deliver them to the General Treasury and further circulation of them was forbidden under drastic penalties. Pursuant thereto currency aggregating 124,077.25 pesos were deposited with the Government, said pesos having a nominal value of \$62,038.62, and having been received by the Company at such valuation in accordance with the decrees governing the circulation of paper money. Claim is therefore made for the par value of said money, no payment of any sort having ever been received from the Mexican Government with respect thereto."

The bills comprising the aforesaid item of \$30,588.05 which is also before this Commission are described by the claimant as follows:

	<i>Pesos</i>
1. Provisional Government of Mexico, Mexico City issue.....	140.00
2. Provisional Government of Mexico (Revalidados).....	1,400.00
3. State of Chihuahua	17,455.00
4. State of Chihuahua	671.00
5. State of Durango	52.00
6. State of Durango	32.00
7. State of Durango	70.10
8. State of Durango	715.00
9. State of Sonora	1.00
10. State of Sonora	75.00
11. State of Sinaloa	900.00
12. Obligaciones Provisionales del Erario federal.....	155.00
13. "Monclova" bills	570.00
14. "Monclova" bills	551.00
15. "Monclova" bills	250.00
16. Brigade Morales and Molina	412.00
17. Army of the Northwest	916.00
18. Brigade in Sinaloa	2,018.00
19. State of Chihuahua Villista bills	34,933.00
	61,176.10

Or \$30,588.05, United States currency.

In view of the scant description of these bills, and the absence of evidence identifying the specific forces allegedly responsible for their issuance and forced acceptance by the claimant, the American Commissioner classified only the last item, namely, 34,933 pesos (\$17,466.50) as being of a special nature and found the balance to constitute a general claim. Although these bills were deposited by the claimant as required by law, no provision was made for their exchange or redemption for the reason that they had been issued without authority of General Carranza. Accordingly the Commissioner considered that no award should be made with respect to the portion of this item classified as general.

This Commission finds no error in the classification of this item by the American Commissioner, nor as to decision of no liability. In the absence of evidence bearing upon the value or cost of the goods in exchange for which claimant received the currency, a valid basis of liability is not established under the Convention of September 10, 1923. For the reasons above indicated, liability does not exist under the Convention of September 8, 1923.

The part of Item 8 of the claim, namely, \$31,450.57, and of Item 10 thereof, namely, \$100, memorialized with Docket No. 1876, comprise the following currency issues:

	Pesos
Provisional Government of Mexico bills.....	15,157
Veracruz and Constitutionalist Army bills.....	2,954
State of Chihuahua bills.....	44,054
Comision Reguladora del Mercado de Henequen bills.....	200
	62,365

Or \$31,550.57.

While claim was originally made in the aforesaid total of \$31,450.57 with respect to these four categories of currency, that amount was reduced in the memorial to \$3,850.36 and further reduced in the brief to \$3,759.12. The bills of the Provisional Government of Mexico (15,157 pesos) were deposited by the claimant as required by law. However, provision was apparently made for the exchange or redemption of only 324 pesos thereof at the rate of ten to one, thus entitling the claimant to receive 32.40 pesos of a new issue. In these circumstances the American Commissioner made an appraisal with respect to those bills in the amount of \$16.20.

As to the claim for \$147.27 (being the 2,954 pesos in Veracruz and Constitutionalist Army bills which claimant deposited for redemption), the Mexican Government admitted liability to the extent of \$146.16. The American Commissioner appraised this item in the latter-mentioned amount.

With respect to the bills of the State of Chihuahua (44,054 pesos) deposited by the claimant, claim was made in the brief of the claimant government in the amount of \$2,623.94. It appears that included in this currency, described by the claimant as State of Chihuahua bills, were 250 pesos in bills of the Monclova issue and 155 pesos in bonds designated as Provisional obligations of the Federal Treasury. No provision was made for the redemption of the bills of the State of Chihuahua here involved although provision for redemption was made with respect to the Monclova bills and the bonds of the Federal Treasury, at the rate of ten to one. The exchange value of the two latter-mentioned issues was therefore 40.5 pesos in bills of the so-called "infalsificable" issue. The Mexican Government admitted liability with respect to the Monclova bills and bonds of the Federal Treasury to the extent indicated, but denied liability in connection with the State of Chihuahua bills. At the normal rate of exchange the 40.5 pesos is equivalent to \$20.19, United States currency.

With reference to the claim for \$100, involving currency of the Comision Reguladora del Mercado de Henequen, the Ameri-

can Commissioner appraised the same in the amount of \$10, upon the basis of his appraisal in the claim of *William M. James*, Docket No. 1154. This Commission concurs in that view for reasons set out in its decision in the claim of the *Cling-Surface Company*, Docket No. 3129, Decision No. 7, Series B.

The losses involved in Item 9 of the claim are described by the claimant as follows:

"Under the decree of the Mexican Government of September 4, 1916, and prior decrees, various sums of paper currency and Mexican National Bonds were called by the Government and under threat of drastic penalties the company turned same in to the Government and received in exchange therefor other issues of paper currency having a smaller value than the value at which the aforesaid paper currency and bonds thus turned in had originally been received by the company. The loss that was sustained on this compulsory exchange aggregated \$6,969.25."

For the same reason which prompted us to reject Item 7 of this claim we are constrained to hold, as to this item, that no valid basis of liability is shown under the terms of either the Special Claims Convention of September 10, 1923, or those of the General Claims Convention of September 8, 1923.

The circumstances surrounding the losses for which claim is made in Item 10 are set forth by the claimant as follows:

"During the paper money era, various issues were from time to time declared void and called in or cancelled. Efforts were in each case made by the Company to bring in all such money from outlying offices for redemption, but this was not in every case possible, and 20,355.70 pesos still remain in the hands of the Company in Mexico City. This was tendered to the Government in 1915 and 1916 and was refused and has never been redeemed. This having been received by the Company under the decrees making its acceptance compulsory, should now be redeemed at par, and the claim with respect to such money is, therefore, for the sum of \$10,167.85."

The American Commissioner, in appraising the claim, disposed of this item as follows:

"I judge from the claimant's statement that Item 4 \$10,077.85 covers bills required to be deposited by law, but which the authorities refused to receive. It is not averred, however, that under the law these bills had a redemption or exchange value, so it cannot be perceived that the claimant lost anything through the refusal. It appears that this item is merely for the depreciation of currency which is not allowable."

For reasons hereinabove set forth, this Commission concurs in that conclusion.

Since, in the opinion of this Commission, the claimant has failed to demonstrate that the appraisal previously made with reference to the part of this claim held to be general is in any essential respect erroneous or would result in injustice, the petition for review is denied, and an award is therefore entered, on

the basis of the appraisal, in the amount of \$172.36 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1917.

With reference to the portion of the claim previously classified as special, an additional award is made in favor of the claimant in the amount of \$20.19, without interest.

DECISION No. 50-D

General Docket No. 2197 (part). Special Docket No. 788 (part). Claimant: Cia. Agricola la Esmeralda. Amount claimed: \$500.00. Award: disallowed.

This claim in the amount of \$500 is part of a larger claim which was allocated to the General Claims Commission by the Joint Committee created pursuant to Article V of the Special Claims Convention of April 24, 1934. The American and Mexican agents of the General Claims Commission agreed that the item embraced in this claim should be classified as special. Commissioner Underwood determined this part of the aforementioned larger claim to be a special claim to be settled pursuant to the Special Claims Conventions of September 10, 1923 and April 24, 1934. It has not been adjudicated and now comes before this Commission for adjudication under section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The loss on which this claim is based occurred in March or April 1911 and is alleged to have resulted from requisitions by Maderista revolutionary forces of goods, clothing and equipment from the plantation "La Esmeralda." The claimant did not become owner of the said plantation until February 1912. Thus the claim arose before title to the plantation passed to the claimant. Counsel for claimant contends that the rights in the claim rest in claimant and as support for said contention claimant relies on the following passages of the deed of conveyance:

"By this instrument THE CENTRAL TRUST COMPANY now sells, transfers, assigns and conveys unto COMPANIA AGRICOLA LA ESMERALDA above named, which said Company hereby purchases the tract of land acquired by THE CENTRAL TRUST COMPANY as above set forth, which is known as the plantation 'LA ESMERALDA'." (Annex 2, p. 4)

"THE CENTRAL TRUST COMPANY, hereby quits itself of the ownership and possession of said plantation 'LA ESMERALDA' in favor of the above named purchaser, COMPANIA AGRICOLA LA ESMERALDA, together with all improvements, uses, easements and rights of every name, nature and description, which are a part of said property, or which in fact or in law belong thereto." (*Ibid.* p. 7)

This Commission is constrained to reject claimant's contention. The passages just quoted are contained in a deed of conveyance of real property. They obviously relate to passing of title in the real property and do not constitute an assignment of an international claim of the former owner. Such a claim belongs to the owner of the property at the time when the claim arose and is not "a part" of the plantation.

Accordingly, the claim is disallowed.

General Docket No. 2197 (part). Claimant: Cia. Agricola La Esmeralda. Amount claimed: \$254,446.00. Amount awarded: \$10,650.55.

An appraisal having been made of this claim by a Commissioner designated by the United States within the meaning of Section 4 (a) of the Settlement of Mexican Claims Act of 1942, the claimant or his attorney having been notified by registered mail as provided in Section 4 (b) of the same Act of the appraisal so made, the claimant having notified the Commission that a petition for review will be filed and having thereafter filed such petition within the period prescribed pursuant to subsection (c) of Section 4 of the same Act, and the petition for review having been subsequently withdrawn by the claimant, an award is hereby entered on the basis of such appraisal, pursuant to Section 4 (c) of the Act aforementioned, as follows:

To Cia. Agricola La Esmeralda the principal sum of \$10,650.55 with interest, as provided in Section 7 of the Act from January 1, 1915, without prejudice to subsequent decision, as authorized by Section 3 (a) (5) of the Act, of that part of the claim which has been classified as special and not appraised.

DECISION No. 22-C

General Docket No. 2218. Claimant: Walter Everett. Amount claimed: \$93,400.00. Amount awarded: \$92,802.24.

This claim is before the Commission pursuant to the provisions of section 4 (d) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 25 dated May 11, 1944).

Claimant sought to be indemnified in the amount of 186,800 pesos with interest, predicated his claim upon the failure of Mexico to pay a subsidy to the Pan-American Railroad Company, hereinafter called Pan-American, or to the claimant, who is the assignee of said company. The claimant asserts that he is entitled to the amount aforesaid under a contract which he had with said company by which he was to receive that sum from a fund retained by the respondent government whenever it should be paid over by said government to Pan-American.

Pan-American was incorporated in the State of New Jersey on June 3, 1901. Its American nationality is established and so is that of the claimant.

On August 28, 1901, the Mexican Government contracted with Pan-American, represented by claimant, for the construction of a railroad to connect the Tehuantepec National Railway with the Guatemalan frontier. The Mexican Government bound itself to pay Pan-American a subsidy of 12,000 pesos per kilometer of track, payable in its bonds, or in cash equal to 80 percent of the face value of said bonds, as and when each section of 100 kilometers was completed by Pan-American and approved by the Mexican Government, excepting the first section, on which the subsidy would be paid when the railroad was completed from San Gerónimo to Tonalá.

On July 6, 1904, the Mexican Government, through the Department of Communications and Public Works, issued an order, No. 253, retaining 533,500 pesos in 5 percent amortizable bonds, par value, from the amount of the subsidy corresponding per kilometer to the railway line from San Gerónimo to Tonalá to Puerto Arista, as security for the completion of culverts and bridges.

On October 18, 1904, by a contract between Pan-American and the claimant, the former agreed to pay to claimant 233,500 pesos in said bonds, or 80 percent thereof in cash, as soon as the former received from the Mexican Government the said sum of 533,500 pesos in said bonds, or 80 percent of the face value thereof in cash.

About this time, the claimant agreed with one Doak that the latter would build the above-mentioned bridges where needed on the first division of the railroad, and for which he was to receive 300,000 pesos out of the 533,500 pesos retained by Mexico, and that the balance of 233,500 pesos were to be paid to claimant. The bridges and culverts were completed to the satisfaction of the Mexican Government, as evidenced by respondent government's annexes to its answer, as well as by claimant's proof. It is further established that the building of the entire railroad as contemplated under the original agreement of August 28, 1901, above mentioned, was completed.

Pursuant to an Act of the Mexican Congress of December 26, 1906, the Federal Executive was empowered to and did, on July 6, 1907, incorporate the National Railways of Mexico which took over the properties of the National Railroad of Mexico and the Mexican Central Railway. On May 23, 1913, the Board of Directors of the National Railways of Mexico adopted a resolution for its acquisition of the Pan-American railroad lines, franchises and property, subject to all liens and responsibilities on the date when they were taken over. The transfer was effected on March 1, 1914.

It is undisputed that by a decree of December 4, 1914, the Mexican Government assumed charge of the management and administration of all the railway lines and assumed continued in control of the National Railways of Mexico through the year 1925.

In support of the amount claimed herein, there is submitted by claimant the following evidence: An affidavit sworn to by Edward N. Brown in which he states that he was president of National Railways of Mexico in 1909 and remained in control thereof to 1914; that the inventory of assets of Pan-American included a claim against the Mexican Government for a balance of subsidy in the sum of 817,081.73 pesos, with a memorandum attached stating that out of this sum there was due to claimant 233,500 pesos in Mexican Government bonds, or 80 percent thereof, i.e., 186,800 pesos, if paid in cash, and that this sum bears interest from 1912 (Mem., Exhibit 8).

Also part of the record is a letter dated June 5, 1925, from Leon Salinas, the then president of National Railways of Mexico, to E. N. Brown. There was transmitted therewith a report of April 28, 1925 to the former from I. J. Terroba, Accountant in the Department of Accountancy, containing a summary of the financial status of the subsidy in question and the statement: "From

the foregoing it appears that there is owing to Mr. Walter Everett \$233,500 in bonds . . ." Mr. Terroba's report was based, as stated therein, upon data from which it appears that on October 14, 1911, the Department of Communications and Public Works had issued its official order on the Treasury, transmitting the order of the President of Mexico that it deliver to Pan-American \$290,510 of bonds on account of \$678,996.40 which was pending payment on the subsidy for the entire line. (Document 1 annexes to Notice filed by United States Agent C. L. Bouvé.)

There is also submitted a letter dated November 2, 1908, from E. S. Robert of Pan-American Construction Company to claimant in which it is set forth that the Mexican Government had paid to the former \$300,000 (discounted 20 percent) on account of the \$523,000 of subsidy reserved, leaving \$223,000 subject to same discount for claimant. (With respect to the amounts referred to in the letter it should be noted that the record clearly establishes that the amount retained by Mexico was 533,500 pesos and that consequently the balance would be 233,500 pesos and not 223,000 pesos as stated in the letter.)

As bearing upon the amount claimed, as well as upon the question of the completion of the building of the railroad, the respondent government's evidence tends to corroborate rather than contradict the evidence furnished by claimant. Annexes V and VI of the Mexican answer contain written statements under seal signed by the Under-Secretary in charge of the office of Communications and Public Works, directed to the Secretary of Finance, to the effect that the President of Mexico had ordered said Secretary of Finance to make payment of part of the subsidy. These orders were issued at the request of the claimant. Annex V states:

"The Pan-American Railroad Company having done works of substituting the provisional bridges on the line with permanent steel bridges in an amount over \$200,000.00 pesos, the President of the Republic has determined that you may order the General Treasury of the Federation to return to the said Company the amount of \$150,000 pesos . . . on account of the \$533,500.00 pesos that were retained as security . . . Mexico, March 24, 1906."

In Annex VI it is stated:

"The Pan-American Railroad Company having performed permanent works in the section of track between San Gerónimo and Tonalá . . . the President of the Republic has ordered that you issue instructions to the General Treasury so that, in conformity with the stipulation in article 15 of the Contract of Concession dated August 25, 1901, you may furnish the said company with the mentioned amount of \$200 000.00 pesos in bonds of the redeemable internal debt, on account of the \$533,500.00 pesos which had remained unpaid as subsidy covering that section of track . . . Mexico, April 24, 1908."

It is, therefore, fairly established that the work was completed and that Mexico so considered it, inasmuch as part of the subsidy was ordered paid by the President of Mexico, according to respondent government's evidence hereinabove discussed.

The answer of the respondent government sets up generally the defense of non-responsibility; that the claimant must look to the railroad companies through the ordinary legal channels. There is interposed a counterclaim of 14,500 pesos as a credit balance due to the respondent government.

Commissioner Underwood in rejecting the claim stated at page 10 of his opinion that:

"We do know that by November 2, 1908 the Pan-American Railroad had been paid by the Government 350,000 pesos out of the total of 533,500 pesos which were mentioned in the contract. It would seem that Mr. Everett would have been entitled to his proportion of that payment, but he says that he has not been paid anything. This circumstance casts great doubt upon the contract itself. In the claim here the Commissioners are asked to require of the Mexican Government something which Mr. Everett did not require of the Pan-American Railroad, although his contract was with that company."

The principal contentions set forth in the petition for review are (1) that Commissioner Underwood erred in disallowing the claim without basing his action on legal or equitable grounds; (2) that there was error in the analysis of the facts, and failure to decide according to the applicable principles of law or equity; (3) that he erred in the digest of a letter of August 7, 1909, resulting in a computation of \$100,000 (pesos) less on the amount due to Pan-American, thus unjustly creating an appearance of exaggeration to the claim; and (4) that Commissioner Underwood's opinion may not be sustained by the facts or by the applicable principles of law.

On review, it is the opinion of this Commission that the claim should be allowed. From all the evidence in this claim it is established that Everett does not base his claim on any contract between him and the Mexican Government, for there was none. There was, however, a contract between that government and Pan-American for the building of a railroad by the latter and the payment of a subsidy therefor to it by the former. Subsequently, on October 18, 1904, a contract between Pan-American and Everett provided that the latter was to receive from the former 233,500 pesos in Mexican bonds or 80 percent thereof in cash immediately upon receipt by Pan-American of 533,500 pesos from the Mexican Government retained theretofore by the latter, as part of the subsidy. Everett being an assignee as to said portion of the subsidy when received became thereby the beneficial owner. *McPherson* claim (United States v. Mexico) *Opinions of the Commissioners* (1927) 325; *Heny* claim, American-Venezuelan Commission of 1903, *Ralston's Report*, 14, 23.

The Mexican Government had the complete control and management of the National Railways until 1925. It follows that when the National Railways acquired Pan-American there subsisted the Mexican Government's liability to pay the subsidy to Pan-American or its assignee. As to Everett's portion Pan-American had been placed in the position of a trustee. It is manifest that Pan-American could not obtain from the respond-

ent government the balance of the subsidy due it. In such circumstances, Everett, as a cestui qui trust, is entitled to bring his claim here as he has done.

"If the trustee refuses to bring the action after demand, or fails to act . . . or the trustee is held to be estopped to sue the third party, the cestui may bring the action against the third person. *Ettlinger v. Persian Rug and Carpet Co.* (et al.) 36 N.E. 1055, 142 N.Y. 189." 4 Bogart, *Trusts and Trustees*, 2,534.

As to the position of the respondent government that the claimant must look to the National Railways of Mexico for the payment of his claim, and that the government in taking over the railroads did not assume the obligations of the railway companies, it should be remembered that the claimant's rights under the agreement between him and Pan-American, dated October 18, 1904, wherein there was assigned to claimant the sum he claims here, were not affected by the taking over by Mexico in 1914 of the physical properties and assets of Pan-American. Though the National Railways assumed the obligations of Pan-American, the obligation to pay the subsidy was originally and primarily that of the respondent government.

The respondent government pleaded that there is due to it 14,500 pesos being the difference between 198,000 pesos which it had paid as subsidy for the 16.5 kilometers of road from Tonalá to Puerto Arista and 183,500 pesos which it owed as a balance on the entire subsidy from the sum withheld by it as the retainage above mentioned. This section was originally built by order of the Mexican Government, and as provided in the contract between it and Pan-American of August 28, 1901, all the work done by Pan-American had first to be approved by Mexico before payment of the subsidy. That the work on the line from Tonalá to Puerto Arista had been completed, cannot be doubted. The respondent government in its brief, page 15, stated: "it is not to be doubted that the Pan-American Railroad Company never had a right to take up a line which had been constructed in compliance with a firm and inalterable (*sic*) concession." There is no evidence that Pan-American had taken up the tracks on this line, though there is some evidence that permission was asked by Pan-American. Mexico argued, in effect, that it is entitled to a credit of the said 198,000 pesos paid by it for said line based upon its argument that Pan-American desired to take up the tracks thereon. Beyond the evidence furnished by Mexico as to the said permission sought by Pan-American, there is no showing of said tracks having been taken up. The Mexican annexes to the answer fail to mention or support any possible inference that said tracks were taken up or removed. In Annex I at page 4 of Mexico's evidence, Engineer J. I. Boneta, Technical Inspector of Railroads, says: "On October 22, 1909, there was received in this Department a petition signed by Mr. David E. Thompson, as the new representative of the Company, which, in reference to said section of track, requested authorization to *suppress* it and use the rails in other sections of the railroad;" (*italics inserted*). Apparently the authorization was never given, as Pan-American failed to

execute any agreement therefor with Mexico. There is no convincing evidence that the tracks were removed. It is reasonable to infer that Mexico desired another route because of expected greater accommodation for its commerce and populace. Mexico has failed to establish its set-off or counter-claim herein.

As to the unfavorable inference drawn by Commissioner Underwood concerning the failure of claimant to receive a proportion of the payment of 350,000 pesos which the Mexican Government had made by November 2, 1908, it need only be stated that under the aforesaid contract made by claimant with Doak for the building of the bridges and culverts required by Mexico, the latter was to receive 300,000 pesos. We do not understand that Doak and claimant were to receive proportionate shares of the amounts received from Mexico.

In a letter of April 29, 1930 to Mr. Carlyle R. Barnett, of the American Agency, claimant asked for interest "at five percent from July 1st, 1912, as the road was completed and opened for traffic sometime prior to that date."

These considerations lead to the conclusion that the claimant has suffered damage in the sum of 186,800 pesos, equivalent, at the rate of exchange (.4968) applicable as of the time it became due, on or about July 1, 1912, to \$92,802.24.

Accordingly, the claimant is awarded \$92,802.24 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from July 1, 1912.

DECISION No. 42-B

DECISION No. 52-C

General Docket Nos. 929 and 2231. Claimant: Thomas W. Stringfield (Next of Kin) Ida Alice Stringfield Hatfield. Amount claimed: \$60,000.00. Amount awarded: \$25,000.00.

The two claims here presented, one in the amount of \$1,825 (Docket No. 929) and the other for \$60,000 (Docket No. 2231), have heretofore been appraised by the American Commissioner under the General Claims Protocol of April 24, 1934, as being entitled to no award. Petitions for review of both appraisals were filed with this Commission pursuant to the Settlement of Mexican Claims Act of 1942. We have heretofore granted a review of the appraisal made of the claim in Docket No. 2231 (Order No. 63 dated September 7, 1945). The other petition is still pending and will here be considered, along with the claim wherein we granted a review, as aforesaid.

The Commission finds that the evidence is sufficient to establish the American citizenship of the parties herein at all times pertinent to this claim.

The claim in Docket No. 2231 for \$60,000 is for personal injuries suffered by claimant, Ida Alice Stringfield Hatfield, and for the death of other members of her family. The other claim, in Docket No. 929, is for the loss of personal property in the amount of \$1,825, in the immediate possession of Thomas W. Stringfield and his family at the time of the attack by Indians. No other memorials were filed.

It is alleged as the basis of both claims that Indians domiciled in Mexico, with at least the tacit permission of Mexican authori-

ties, organized a certain raid with some Mexicans participating; that the band crossed into Texas and attacked Thomas W. Stringfield on September 28, 1870 in McMullen County, Texas, while he was traveling in an ox cart with his family; that he and his wife were murdered; that the claimant, Ida Alice Stringfield Hatfield, was wounded seven times by lance thrusts and was left for dead; that her two brothers, aged six and four, were kidnapped and that the wagon was plundered. The fate of the two boys has never been conclusively ascertained but the evidence raises a very strong presumption that they either died of hardship and exposure or were murdered.

It is further alleged that the raiding band returned to Mexico and that the pursuit, in an attempt to rescue the kidnaped boys, was stopped at the Rio Grande by Mexican authorities. Said claimant, Ida Alice Stringfield Hatfield, was for a considerable period a total invalid. It is shown that she suffered permanent injuries which caused life-long suffering and that she was crippled to some extent for the balance of her life.

The personal property for the loss of which damage is asked in Docket No. 929 consisted of 36 horses, wearing apparel, two guns, blankets, and \$125 in money—a total alleged value of \$1,825. It appears that a claim for property damage was filed by claimant with the Court of Claims (Indian Depredations No. 8298). It was therein claimed that property consisting of 25 head of horses, two guns, blankets, wearing apparel, saddles and bridles were taken, as well as \$107.50 in money. In that claim there was some evidence that at least one of the saddles was not stolen but was left at the home of a neighbor. It appears well established by the record that the stolen property was in the immediate possession of Thomas W. Stringfield at the time of his slaying. There are discrepancies as to the items of property stolen and the values placed thereon. These may be accounted for because of the age of claimant, the only survivor of the attack, and the long time that she was incapacitated. She was either eight or ten years of age at the time, the evidence being contradictory on that point. It seems clear that the claim before the Court of Claims was for the same property. The Court of Claims entered an award in favor of claimant in the amount of \$897 therefor. It would appear, therefore, that indemnification has already been made for the property involved in the claim. The petition for review in that claim (Docket No. 929) is accordingly denied and an award will be certified to the Treasury Department in accordance with the appraisal heretofore made.

The aforesaid claim (Docket No. 2231) for the death of the family of the claimant and for her own personal injuries is, however, found to possess merit. There is evidence that the raid originated in Mexico and that the raiders fled back into Mexico after the raid. This raid took place in 1870 during the period when raids were systematic and continuous and the facts, as established, bring this claim within the purview of our general opinion on cattle and raid claims dated December 30, 1944, wherein the liability of the Mexican Government is deemed

created under facts and circumstances substantially similar to those involved herein.

The claimant suffered severe injuries herself and, in addition, suffered the loss of her parents and two brothers. While the amount of damages sustained by her cannot be computed with mathematical accuracy, this Commission considers that an award of \$25,000 for personal injuries and the loss of claimant's family would be reasonable.

Accordingly, the claimant, Ida Alice Stringfield Hatfield, or her heirs, are awarded the sum of \$25,000, without interest.

DECISION No. 28-D

General Docket Nos. 2261 and 2402. Special Docket Nos. 1023 (part) and 1379. Amount claimed: \$75,000.00. Amount awarded: \$12,000.00.

Claimants: Next of Kin of Joshua Stevens and Walter J. Stevens.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. It was presented by memorial to the General Claims Commission in the amount of \$75,000. The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that the claim falls within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. Claimants expressed no objection to that determination and have filed no additional evidence in support of the claim under the provisions of section 3 (c) of the Settlement of Mexican Claims Act of 1942.

The claim is predicated upon the murder of Joshua Stevens at the hands of Mexican revolutionary forces under the command of General Jose Inez Salazar, on or about August 26, 1912, near his ranch house in the vicinity of Colonia Pacheco, State of Chihuahua, Mexico. Allegations are also made with respect to the failure of authorities of the Mexican Government to take appropriate steps for the apprehension and punishment of persons responsible for the murder of Stevens. At the time of his death the deceased and his family, all American citizens, were residents of the Mormon Colony in the locality just mentioned where he was the owner of a ranch and engaged in the livestock business. For some time prior to the murder of Stevens it appears that this region was subjected to raids by armed revolutionists who seized and carried away from the Stevens ranch horses, cattle and other personal property.

On the morning of August 26, 1912, two armed Mexicans approached the orchard and berry patch near the ranch house where Mrs. Stevens and her daughters were engaged in picking berries. The latter immediately returned to the ranch house and notified Joshua Stevens of the approach of the Mexicans. Mr. Stevens armed himself and proceeded to meet the two Mexicans. After some conversation and while the three men were proceeding toward the highway, one of the Mexicans suddenly turned and

stabbed Stevens in the chest. In the brief struggle which followed, Stevens shot one of the Mexicans before falling mortally wounded himself. The other assailant immediately disappeared from the scene.

The facts of the murder were promptly reported to the local authorities who sent a number of persons to investigate the crime. It is not shown that any effective efforts were made to apprehend the assailant who escaped, although his presence in the neighborhood thereafter appears to have been a matter of common knowledge.

Evidence contained in the record leaves little doubt that the assailants of Stevens were members of revolutionary forces under the command of Jose Inez Salazar.

In a group of claims involving other depredations committed by forces under General Salazar in 1912, the Special Mexican Claims Commission established under an Act of Congress of April 10, 1935 observed that

"During the Huerta regime Orozco, Salazar, and subordinate officers in the Orozco movement were incorporated into the Federal Army and given commissions. The conditions required to impose liability under paragraph 5 of Article III of the Convention of September 10, 1923, are therefore established." (Report of that Commission to the Secretary of State (1938), p. 38.)

Liability in the instant case for the acts of those forces is equally clear.

Joshua Stevens was 56 years of age at the time of his death. He was survived by his widow and thirteen children, eight of whom were minors at that time. The record shows that he then earned an income of about \$2,000 a year, practically all of which was contributed to the support of his family. He was in good health and, but for his untimely death, it is to be presumed that his widow and minor children would have continued to enjoy his companionship and support for many years. Taking these factors into account, as well as the respective ages of the children at the time of their father's death, the Commission considers that the indemnity to which the claimants are entitled should be fixed in the amount of \$12,000, without interest, \$6,000 of which is awarded to the widow, Elizabeth K. Stevens, and \$6,000 to the eight children as follows:

Ammon Cannon Stevens	\$200
Emma Stevens (Mrs. John D. Palmer)	300
Abigail Stevens (Mrs. William Kuenzler)	600
Elmina Stevens (Mrs. Earl Stanley Lamb)	300
Vivian Stevens (Mrs. Seth Shumway)	800
Daniel Edward Stevens	1,100
Brigham Ezekiel Stevens	1,100
Joseph Marian Stevens	1,600

DECISION No. 22-D

General Docket No. 2282 (part). Special Docket No. 695. Claimants: Merritt Masters Sherman, Tamar Gilbert Rockwell, Lewis Henry Lapham, Mary Elizabeth Lapham, Henry George Lapham, and General Docket No. 757. Special Docket No. 2679. Claimant: M. M. Sherman. Amount claimed: \$21,317.10. Amount awarded: \$21,077.10.

The portions of these two claims which are the subject of the present opinion are before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

Each of the claims was filed by memorandum notice with both the General and Special Claims Commissions and each was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a *general* claim. The amount of the claim on behalf of Merritt Masters Sherman, et al. was stated in the memoranda notices as \$170,801.36 and the amount of the claim on behalf of M. M. Sherman, individually, was in the amount of \$75,000. The two claims were consolidated in one memorial which was filed with the General Claims Commission in the total amount of \$170,605.87 comprising 16 separate items. In that memorial the claim on behalf of M. M. Sherman, individually, was reduced to \$185.

Seven of the items of claim were classified by the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 as a *general* claim and an appraisal with reference to those items was made in the amount of \$17,297.18. The other nine items of claim totalling \$21,317.10 were classified by the Commissioner as *special*. The claimants having expressed no objection to the action of the American Commissioner, this Commission, on November 11, 1943, entered an award on the basis of that appraisal conformably with the provisions of section 4 (b) of the Settlement of Mexican Claims Act of 1942.

There accordingly remain for disposition by this Commission the following nine items of claim classified by the American Commissioner as *special*:

	United States currency
1. Value of property taken by Federal authorities under the command of Colonel Ojeda and Prefect Chiapas in March 1911..	\$60.00
2. Value of property taken by Maderista revolutionary authorities between April 8, 1911 and October 31, 1911.....	907.00
3. Value of property taken by revolutionary authorities known as Red Flaggers on August 28 and 29, 1913.....	1,596.50
4. Value of property taken by Federal authorities under the command of Captain Sosanado and Captain Villosenor in September 1913.....	352.50
5. Value of property taken by the Red Flagger revolutionary authorities under the command of Fernando Vildoso and Cayetano Montenegro on March 23, 1914.....	560.00
6. Value of property taken by Maytorenista revolutionary authorities under the command of Colonels Galoz, Dominguez, Frago and Rinia between February 25, 1915 and April 2, 1915	4,041.10
7. Value of property taken by the Constitutionalist authorities under the command of Colonel Simanego and Colonel Jimenez in April and May 1915.....	5,095.00
8. Value of property taken by Major Manuel Meza of the Constitutionalist authorities on March 31, 1916.....	7,500.00
9. Losses due to the value of property taken by armed Mexican nationals on April 12, 1917.....	1,205.00

At all times pertinent to the present claims the claimants or their predecessors in interest, all American citizens, were the owners and operators of a property known as the San Rafael de

la Noria ranch situated in the District of Moctezuma, State of Sonora. During the revolutionary period from 1910 to 1920 claimants' property was subjected to numerous raids by armed revolutionary and federal forces which seized, requisitioned or destroyed property of the claimants and otherwise interfered with the operation of their ranch. Other Mexican nationals also participated to some extent in those depredations.

Included in Item 9 of the claim enumerated above is a claim for the loss of 18 horses valued at \$40 each, said to have been taken on April 12, 1917. The evidence relating to this matter indicates that only 12 horses were taken from the claimants at that time and this item of claim should accordingly be reduced by \$240.

The remaining items of claim before this Commission are established by satisfactory evidence and all of the losses, with the exception noted, are shown to have been occasioned by forces for whose acts liability on the part of the Mexican Government exists under Article III of the Special Claims Convention of September 10, 1923.

The Commission accordingly decides that the claimants are entitled to an award in the total amount of \$21,077.10, without interest. Of this amount M. M. Sherman is entitled to \$185 individually. The balance of the amount is awarded to all of the claimants jointly, as their interest may appear.

General Docket No. 2282 (part). Special Docket No. 695. Claimants: Merritt Masters Sherman, Tamar Gilbert Rockwell, Lewis Henry Lapham, Mary Elizabeth Lapham, Henry George Lapham, and General Docket No. 757. Special Docket No. 2679. Claimant: M. M. Sherman.

In the Commission's Decision No. 22, Series D, covering portions of these two claims which were before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942, the following award was made:

"The Commission accordingly decides that the claimants are entitled to an award in the total amount of \$21,077.10, without interest. Of this amount M. M. Sherman is entitled to \$185 individually. The balance of the amount is awarded to all of the claimants jointly, as their interest may appear."

Of the total sum of \$21,077.10 awarded as above stated, the amount \$185.00 relates to the individual claim of M. M. Sherman (General Docket No. 757, Special Docket No. 2679), and the amount \$20,892.10 relates to the joint claim of Merritt Masters Sherman, Tamar Gilbert Rockwell, Lewis Henry Lapham, Mary Elizabeth Lapham, and Henry George Lapham (General Docket No. 2282 (part), Special Docket No. 695).

The record shows that the proportionate interests of the several claimants in the subject matter of the claim are the same as are stated in the appraisal, and as applied in the award (No. 447) based thereon, covering that part of the claim held to be General, i. e.:

Merritt Masters Sherman	3/10ths	(54/180ths)
Tamar Gilbert Rockwell	7/30ths	(42/180ths)
Lewis Henry Lapham	7/20ths	(63/180ths)
Mary Elizabeth Lapham	7/180ths	(7/180ths)
Henry George Lapham	7/90ths	(14/180ths)

The Commission therefore finds that, on the basis of such interests, the claimants are entitled to the following proportions of the amount \$20,892.10 hereinabove referred to:

Merritt Masters Sherman 54/180ths, or.....	\$6,267.63
Tamar Gilbert Rockwell 42/180ths, or.....	4,874.82
Lewis Henry Lapham 63/180ths, or.....	7,312.24
Mary Elizabeth Lapham 7/180ths, or.....	812.47
Henry George Lapham 14/180ths, or.....	1,624.94
Total	\$20,892.10

It is hereby

ORDERED: that the original hereof be transmitted to the Secretary of the Treasury in connection with Decision No. 22, Series D.

DECISION No. 33-D

General Docket No. 2285 (part). Special Docket No. 540 (part).
Claimant: Crown Cork and Seal Company. Amount claimed: \$26,544.62.
Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is a part of a larger claim which was filed by memorandum notice with both the General and Special Claims Commissions. The portion of the claim, to wit, \$135,524.70, classified as *general* by the Joint Committee created under the Special Claims Convention of April 24, 1934, was presented by memorial to the General Claims Commission, solely for the purpose of determining the question of jurisdiction.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that items of claim totalling \$26,544.62 fell within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. The balance of the claim, to wit: \$108,980.08, was classified by him as being *general* but he held that no award should be made with respect thereto. No objection being made to the action of the American Commissioner by the claimant, this Commission on August 11, 1944 entered an award on the basis of that appraisal conformably with the provisions of section 4 (b) of the Settlement of Mexican Claims Act of 1942. There accordingly remain for final disposition items of claim amounting to \$26,544.62, classified by the American Commissioner as special.

These items comprise bills of the following issues of paper currency which it is alleged the claimant, an American national, was obliged to accept in payment of goods sold in the regular course of its business in Mexico:

1. Bills of the State of Chihuahua issued under decree of February 10, 1914.....	Pesos 51,030.50
2. Bills of the Northwestern Army issued August 10, 1914 by Obregon	625.00
3. Bills of the Constitutionalist Army issued March 30, 1914.....	27.00
4. Bills of the Constitutionalist Government under decree of April 26, 1913	609.00
5. Bills of Villistas issued in December, 1913.....	797.75
	53,089.25

Or \$26,544.62 United States currency.

The only information furnished by the claimant regarding the circumstances under which it came into possession of this currency is contained in the following excerpt from an affidavit of H. R. Rhoads, claimant's factory superintendent, dated September 7, 1921:

"That from time to time paper money issued in the Republic of Mexico was by decree or other law made legal tender, that the Company was consequently obliged, in the course of making sales of its products, to accept said paper money in payment of all obligations resulting from such sales in Mexico, and that in the manner described, the Company did come in the possession of this paper money as set forth in the Claim Application of which this affidavit is a part, and in the amounts named, and that the Company did not acquire the said paper money by purchase or speculation in the open markets in Mexico or in any other country."

The claimant does not state whether or not provision was made by the Mexican Government for the redemption or exchange of the currency in question, whether it presented the bills for that purpose, or whether any or all of the currency here involved was repudiated in whole or in part. Neither is evidence furnished with reference to the cost or value of the goods sold by the claimant in exchange for which it received the paper currency.

Upon the entire record, it does not appear that liability on the part of the Mexican Government is established. Accordingly, the claim is disallowed.

DECISION No. 31-D

General Docket No. 2300. Special Docket No. 516. Claimant: San Carlos Cattle Company. Amount claimed: \$241,266.00. Amount awarded: \$189,610.00.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions in the amount of \$241,266, and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim.

As presented by memorial to the General Claims Commission on December 10, 1935, the claim included the following items:

1. Value of 500 steers at \$32 each and 12 horses at \$40 each taken from the claimant by Carranza forces in August 1914.....	\$16,480
2. Value of 600 steers at \$32 each taken from the claimant by Carranza forces during the 6-month period beginning in August 1914	19,200
3. Value of 94 head of cattle at \$32 each and 15 horses at \$40 each taken from the claimant in September 1914, under orders of the Prefect of Altar	3,608
4. Value of 700 steers at \$32 each and 200 horses at \$40 each taken from the claimant by Carranza forces from September 1914 to May 1916	30,400
5. Value of 8,000 cattle at \$32 each taken from claimant by federal forces after May 15, 1916.....	256,000
6. Value of 29,000 meters of barbed wire worth \$3,000 and 1,700 rolls of wire at \$5 a roll, taken from claimant by Carranza forces in 1915-1916.....	11,500
	337,188

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that the entire claim fell within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923, but that the claim should be limited to the amount stated in the memorandum notice of claim, namely, \$241,266.

In considering the question of a variation in the amounts stated in a memorandum notice of claim and in a memorial, the former General Claims Commission, in a decision rendered on February 4, 1926, stated:

"In the opinion of the Commission divergences between a Memorandum and a Memorial are allowable according to the Convention and to the Rules, in all cases in which it is apparent that the modified claim is identical with the original claim.

"The Commission construes Rule 3, Sec. 2, Clause (a), to the effect that the amount of a claim as set forth in a Memorandum shall be considered to be an approximate amount even in cases where the Memorandum does not so expressly state. The amount may be set forth more accurately in the subsequent pleadings." (Opinions of Commissioners, February 4, 1926, to July 23, 1927, p. 1.)

This Commission is of the opinion that the present claim may be considered as properly filed in the amount stated in the memorial as noted above.

In the written legal contentions filed with this Commission on behalf of the claimant on October 25, 1943, claimant sought to include in the claim an item of \$640 not contained in the memorial. However, no authority exists for the inclusion of this additional item of claim and consequently it cannot be considered.

Additional evidence in support of the claim was filed with this Commission on October 25, 1943, under the provisions of section 3 (c) of the Settlement of Mexican Claims Act of 1942.

The claimant, an American national, was at all times pertinent to the claim engaged in the livestock and ranching business in the State of Sonora, Mexico, where it leased extensive areas of land for that purpose.

It is satisfactorily shown by the record that claimant sustained a loss of 500 cattle and 12 horses in August 1914 (Item 1) and of 600 cattle during the following six months period (Item 2), and that said losses were occasioned by the acts of forces enumerated in Article III of the Special Claims Convention of September 10, 1923. The amounts claimed, however, appear to be excessive in the light of the evidence which is furnished. In the opinion of the Commission \$25 per head for cattle and \$30 each for horses represents fair compensation therefor. On this basis, claimant is entitled to \$12,860 and \$15,000 respectively, with reference to Items 1 and 2 of the claim.

The evidence is not convincing with reference to the loss of 94 cattle and 15 horses, said to have been taken from the claimant in September 1914 by the Prefect of Altar, and which comprises

Item 3 of the claim. Accordingly, no allowance is made on account of that item.

With respect to Item 4 of the claim, only the loss of 200 horses is considered as proven and an allowance is made for them at the rate of \$30 each or a total of \$6,000.

Considerable uncertainty exists in the affidavits of witnesses with reference to the loss of the large number of cattle for which claim is made in Item 5. From the interrogatories propounded to several witnesses in 1922 by the Court of First Instance in Altar, Sonora, at the instance of the president of the claimant company, and from the answers thereto, it appears that of a herd of about 9,000 cattle apparently taken by the so-called military chief, Angel Camargo, nearly 3,000 head were recovered by the claimant. The loss of approximately 6,000 cattle in this connection appears to be satisfactorily established and an allowance is made therefor in the amount of \$150,000.

While the loss of the wire referred to in Item 6 of the claim is adequately proven, satisfactory information bearing upon its original cost and condition at the time of loss has not been presented. In these circumstances an allowance therefor in the amount of \$5,750 is deemed adequate.

The total sum involved in the above items of claim found to be meritorious is \$189,610. An award is accordingly made in favor of the claimant in that amount without interest.

DECISION No. 46-D

General Docket No. 2307 (part). Special Docket No. 1397 (part). Claimant: Krakauer-Zork Company, E. Moye, receiver. Amount claimed: \$14,577.21. Amount awarded: \$9,029.91.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is a part of a larger claim which was filed by memorandum notice with both the General and Special Claims Commissions in the amount of \$24,768.01. The entire claim was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a general claim.

As presented to the General Claims Commission in two memorials the claim included the following items:

1. Value of 27 pistols purchased from the claimant in 1910 by officials of the Mexican Government.....	\$474.87
2. Value of horse blankets and 2 carloads of alfalfa confiscated by Madera revolutionary forces in 1911.....	604.39
3. Value of powder house and contents destroyed by Mexican officials in Ciudad Juarez in 1911 to prevent their falling into the hands of the revolutionists	5,701.36
4. Value of arms and ammunition supplied to Federal forces in 1911.....	1,722.40
5. Value of two carloads of oats and fodder seized by revolutionary forces of General Terrazas in 1912.....	333.18
6. Value of a powder warehouse destroyed by Villa forces in Chihuahua in 1913	1,375.00
7. Money advanced for payment of federal soldiers in Chihuahua City in 1913	1,015.98
8. Value of machinery seized or destroyed by Constitutionalist forces in 1914 and 1915.....	5,547.30
9. Loan to Constitutionalist Railways in 1915.....	750.50
	17,524.98

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that items 1, 4 and 9 mentioned above were within the jurisdiction of the General Claims Commission and he appraised these items in the amounts claimed, namely, \$2,947.77. He classified the remaining six items of claim, namely, items 2, 3, 5, 6, 7 and 8 as *special*. The claimant having expressed no objection to the action of the American Commissioner, this Commission, on November 11, 1943, entered an award on the basis of that appraisal conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. There accordingly remain for final disposition the six items of claim classified by the American Commissioner as special in the total amount of \$14,577.21.

The Krakauer-Zork Company, an American national, was at all times pertinent to the present claim, engaged in the merchandising business with its principal office in the City of El Paso, Texas. In that connection the Company also operated branch offices in the State of Chihuahua, Mexico. During the years 1910-1915, the claimant sustained losses and damages as the result of acts of revolutionary forces and authorities of the Mexican Government as indicated by the above-mentioned items of claim.

With respect to items 2, 3, 5, 6 and 7, mentioned above, the Commission finds that the evidence establishes in a satisfactory manner that the claimant sustained losses in the amounts claimed and that such losses were occasioned by forces for whose acts the Mexican Government assumed liability under the terms of the Special Claims Convention of September 10, 1923.

It is asserted in connection with the loss constituting item 8 (\$5,547.30) that this sum represents the amount of an indebtedness owing to the claimant by the firm of Read and Wilson in 1914; that in settlement of this account the firm transferred to the claimant certain items of machinery located at different places in Mexico, all of which were subsequently destroyed or confiscated by revolutionary forces. Aside from the fact that the transfer of the machinery is said to have liquidated a debt in the amount of \$5,547.30, the record contains no evidence bearing upon the value of the machinery either at the time of the transfer or at the time of its destruction or confiscation. Nor is it convincingly established that this loss was due to forces creating Mexican liability. In these circumstances, a proper basis is not established for an allowance with reference to this item.

For reasons set forth above, an award in the total amount of \$9,029.91 is made in favor of the claimant without interest.

DECISION No. 108-B

DECISION No. 53-D

General Docket No. 2315. Special Docket No. 761. Claimant: International Lumber and Development Company, United Security Life Insurance and Trust Company, Tropical Products Company. Amount claimed: \$363,357.00. Award: disallowed.

The claimant herein filed claims before the Special Claims Commission and the General Claims Commission, for losses alleged to have been caused by improper and illegal acts on the part of the

Governor of Campeche, Mexico, and by loss of personal property as the result of the acts of armed forces in 1914.

While the claims have been filed in the three names, it is alleged that the United Security Life Insurance and Trust Company bought a tract of land of about 300,000 acres of land known as the "San Pablo Hacienda" in the District of Champotan, Campeche, Mexico, as trustee for the International Lumber and Development Company and that the Tropical Products Company now owns all the assets of such latter company and is considered the claimant herein.

The claimant herein filed identical memoranda of claim with both the General and Special Claims Commissions.

The American Commissioner, as provided in the Convention of 1934, made an appraisal of the items of claim determined by him to be properly before the General Claims Commission, and such appraisal held that no award should be made. The pleading filed by claimant has been considered by this Commission to be intended as a petition for review of such appraisal, as well as a brief in support of the claim which was filed before the Special Claims Commission.

Such claims combined for the purposes of this decision consist of three items of claim which will be considered separately.

The first item of claim is for the same damages and in the same amount as the claim of Isabelle Miller (AMC Decision No. 34—Series B), which is referred to for the history of the transaction involved in this claim. This item of claim is examined in detail in that decision and must be considered to be general in nature. It contends that claimant lost \$285,000.00 representing advances to workmen. The claimant herein has referred to the evidence in that claim to support its contention of loss. All the evidence in the record would indicate that the workmen were employed by Markley and Miller, and not by the claimant herein, and that any advances to them were made by that firm and not this claimant. The claim for this item cannot be allowed, since ownership of the claim is not shown to be in this claimant. Other reasons for such rejection of the item are fully discussed in the decision in the Miller claim, above mentioned.

The second item of claim is for depreciation in the value of land allegedly owned by claimant's predecessor in interest. In brief, it is alleged that claimant's predecessor in interest had a contract with Markley and Miller to clear land, that a considerable area was cleared and planted; that the Governor of the State being refused bribes, enticed away a number of workmen and that since such workmen could not be replaced, the cleared land reverted to jungle. Clearly this item of claim cannot be the result of the acts of armed forces, and must therefore be considered general in nature. The direct loss caused by the action of the Governor of the State would fall on Markley and Miller, if any loss actually occurred. The difficulty of securing labor was a general condition in Mexico during all of the revolutionary period between 1910 and 1920 and may account for the failure of the company to obtain labor after their contract with Markley and Miller had expired.

The damage caused by reversion to jungle, if it occurred, is too remote to be the subject of an award.

The third item of claim is for the loss of personal property. This is alleged to have been caused by the acts of armed forces in 1914, but which the evidence shows was probably in 1913. This is the only one of such items which falls within the jurisdiction of the Special Claims Commission. The Markley and Miller interest also filed a claim for such losses alleging the ownership of the property to be in that firm. (Claim before the Special Claims Commission, Docket No. 930, Decision No. 266.) No evidence as to the property in question has been submitted by this claimant, but it refers to the evidence in the Markley and Miller claim to prove this item of claim. That evidence, although very meager, alleges the ownership to be in Markley and Miller and not in this claimant. Apart, however, from the question as to the ownership of the property, the evidence as to the loss thereof is not satisfactory. The affidavits submitted as to proof are based on an inventory of a former manager of Markley and Miller who, many years later, stated in round figures the value of certain personal property consisting of livestock, tools, equipment and supplies. He had left the employ of Markley and Miller in June of 1911. There is nothing to indicate that such inventory remained constant during the more than two years that elapsed before the alleged loss. Moreover the affidavits indicate that livestock had strayed and it appeared that affiants were somewhat uncertain what had been taken by the armed forces and what was scattered through the jungle.

Since it appears that neither the extent of loss nor the ownership of the property lost is established in a satisfactory manner, such item of claim cannot be allowed.

For the reasons stated above, the claim before the Special Claims Commission must be disallowed.

The petition for review of the appraisal in the claim before the General Claims Commission, for the reasons stated herein and in the Miller claim above mentioned, has not shown in a satisfactory manner that the appraisal has caused an injustice to the claimant, and such petition is hereby denied. Disallowance is therefore entered on the basis of the appraisal.

DECISION No. 27-D

General Docket No. 2317 (part). Special Docket No. 1874 (part). Claimant: Charles Biesel. Amount claimed: \$15,000.00. Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. The entire claim in the amount of \$20,000 was filed by memorandum notice with both the General and Special Claims Commissions and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. It was presented by memorial to the General Claims Commission for determination solely on the question of jurisdiction.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 held that the portion of the claim based upon the

failure of authorities of the Mexican Government to refund the amount of a bond (\$5,000) deposited to secure claimant's release from arrest in 1913 constitutes a general claim but that no award should be made with respect thereto. He classified the balance of the claim (\$15,000) as a special claim. The claimant expressed no objection to the action of the American Commissioner and has filed no additional evidence under section 3(c) of the Settlement of Mexican Claims Act of 1942, in support of the portion of the claim classified as special. This Commission, conformably with the provisions of section 4(b) of the above-mentioned Act, on August 11, 1944 entered an award on the basis of the American Commissioner's appraisal of the part of the claim classified as general. There accordingly remains for disposition the item of claim in the amount of \$15,000 classified as special.

This portion of the claim is based upon claimant's arrest on or about July 16, 1913 in the town of Santa Rosalia, State of Chihuahua, by order of General Pascual Orozco on charges of having conspired to defraud the Mexican Government of export duties, and of aiding and abetting the revolutionists. Claimant was detained in the custody of the authorities for a period of about two weeks before being released on bond. The record indicates that proceedings in connection with the charges against the claimant were conducted before the District Court in Chihuahua City, but a transcript of those proceedings has not been furnished and there is not before the Commission evidence to establish that his arrest and detention were violative of any rights secured to him under either Mexican law or international law.

In these circumstances the claim must be disallowed.

DECISION No. 35-D

General Docket No. 2323 (part). Special Docket No. 515 (part). Claimant: Dolores R. V. Newton. Amount claimed: \$3,133.25. Award: disallowed.

The portion of this claim which is the subject of the present decision is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is a part of a larger claim in the amount of \$157,848.83 which was filed by memorandum notice with both the General and Special Claims Commissions. The part of the claim classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a special claim, namely, \$136,355.58, was disposed of by the Special Mexican Claims Commission established under an Act of Congress of April 10, 1935. The balance of the claim, i. e., \$21,493.25, classified by the Joint Committee as general, was filed by memorial with the General Claims Commission for determination of the sole question of jurisdiction.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that one item of claim in the amount of \$3,133.25 representing paper money issued by Francisco Villa and his generals and which claimant was allegedly forced to accept, fell within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923 and that the balance thereof, \$18,360, constituted a general claim. He con-

cluded that no award should be made with reference to the portion of the claim held to be general.

The claimant having expressed no objection to the action of the American Commissioner, this Commission, on August 11, 1944, entered an award on the basis of that appraisal conformably with the provisions of section 4 (b) of the Settlement of Mexican Claims Act of 1942. There accordingly remains for final disposition the item of claim in the amount of \$3,133.25, considered by the American Commissioner to be a special claim.

The losses in the amount of \$21,493.25, which were the subject of the memorial filed with the General Claims Commission, as noted above, and which included the aforesaid item of \$3,133.25, were described in the memorandum notice of claim as follows:

"During said period [1911-1920] claimant sustained additional damage in the sum of \$21,493.25 more or less, United States currency by reason of Mexican paper money which she had been compelled to accept by virtue of orders or decrees of Mexican governmental or revolutionary forces or functionaries."

The only other evidence or information contained in the record with reference to the item of loss before this Commission consists of the following extract from a letter dated August 22, 1921 from the claimant to her attorneys:

"Looking over my pretended claim, I find that there are laid aside in paper money the following amounts:

* * *

Pesos

Paper bills (Francisco Villa, and his Generals) . . 6,266.50"

Reference is also made in said letter to items declared to be *general* as aforementioned, and which are not before this Commission.

The bills themselves are not presented and no evidence is furnished to establish the circumstances under which this money came into the possession of the claimant. It is not alleged that the claimant made any effort to redeem the bills or that their redemption was refused by authorities of the Mexican Government.

In the absence of any showing that facts exist in this case which would involve the responsibility of the Mexican Government, the claim is disallowed.

DECISION No. 49-D

General Docket No. 2325. Special Docket No. 1290. Claimant: J. M. Dobie. Amount claimed: \$16,988.00. Amount awarded: \$16,988.00.

In 1915 J. M. Dobie, a citizen of the United States and a resident of Texas, purchased the Las Rucias Ranch consisting of 80,000 acres in the State of Coahuila, Mexico, together with 3,500 head of cattle and 425 horses and mules. During the year 1915 revolutionary forces of Villa invaded claimant's ranch and confiscated 100 head of cattle belonging to him of the claimed value of \$5,000. In 1917 Carrancista revolutionary forces raided Dobie's ranch and seized 35 horses valued at \$60 each, together with other personal property, the total value of which is said to be \$2,518. In 1919 Villista revolutionary forces again raided claimant's ranch and confiscated 100 horses and other personal property including a Dodge automobile said to have a total worth of \$8,970. At the

same time the Villista forces abducted F. C. Hugo, the foreman of claimant's ranch, and held him as a prisoner until there was delivered to them horeshoes valued at \$500.

J. M. Dobie died in 1929 leaving a will in which his wife, Ida May Dobie, was named as his sole beneficiary. The will designated Ida May Dobie and R. S. Ball as joint executrix and executor of the estate.

A "Memorandum of Claim" was filed in 1926 by Henry W. Anderson, Agent of the United States, in behalf of J. M. Dobie v. The United Mexican States. In 1935 a memorial was presented by Bert L. Hunt, Agent of the United States. Both the memorandum and memorial were considered by Honorable Oscar W. Underwood, Jr., who submitted a memorandum opinion (General Docket No. 2324) wherein he held that: "The sum of \$16,988.00 claimed herein is governed by Article III of the Special Claims Convention of September 10, 1923, and should be settled pursuant to the Special Claims Convention of April 24, 1934."

The claim comes before this Commission for adjudication under section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The record establishes that the revolutionary forces confiscated the property of J. M. Dobie, deceased, and that its value was \$16,988; that Ida May Dobie, his widow, is the sole beneficiary of his estate, and as such is entitled to an award in the sum of \$16,988. Her American citizenship is established.

Accordingly, an award is made to the present claimant, Ida May Dobie, in the sum of \$16,988, without interest.

DECISION No. 21-C

General Docket No. 2348. Claimant: Marion Clyde Dyer. Amount claimed: \$155,000.00. Amount awarded: \$80,040.30.

This claim is before the Commission pursuant to the provisions of section 4 (d) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 32 dated June 15, 1944).

The claim was one for indemnification in the sum of \$155,000 with interest for the alleged dispossession and expropriation of 1,755 hectares of land situated in the Municipality of Canatlán, State of Durango, Mexico. This land was part of a tract of 101,000 hectares which claimant purchased in 1907 for a consideration of \$100,000.

On May 25, 1916, the residents of the "Congregación" San Diego de Alcalá, of the Municipality of Canatlán, petitioned the Governor of Durango for the "restitution" of lands of the said "Congregación," including the 1,755 hectares in question. They alleged that these lands were taken from them wrongfully at the beginning of the Díaz regime. Immediately after the filing of this petition the residents of the village took possession of the claimant's land. Instead of "restitution," the Governor of Durango granted *ejidos* of 1,755 hectares by decree dated September 19, 1917. A Presidential decree dated April 7, 1921, confirmed this expropriation.

It was alleged in the Memorial filed with the General Claims Commission that the expropriation caused claimant to lose valuable seasonal land which produced annually from 12,000 to 14,000 hectoliters of corn; that this land was worth \$125,000; and that claimant's net income from the land, after deducting his costs not exceeding \$2,500, was from \$11,500 to \$13,250. Also, that as a result of the expropriation, the balance of claimant's property became useless for grazing and for the growth of crops necessary to feed cattle. A sum of \$30,000 was asked on account of depreciation in value of the remainder of the land.

Commissioner Underwood, applying the schedule of land values determined upon in the claim of the *Land Finance Company* (United States v. Mexico; General Docket Nos. 49 and 3457), appraised the land at \$14 per hectare. This resulted in a valuation of \$24,570 for the 1,755 hectares expropriated. The sum of \$15,000 was allowed for severance damages, and appraisal was made in the total sum of \$39,570 with interest from May 26, 1916.

Considering the record in this claim on review the Commission is of the opinion that the evidence establishes that the expropriated land had a higher value than that of \$14 per hectare which Commissioner Underwood assigned to it as a result of the application of land values announced in the above-mentioned claim of *Land Finance Company*. The testimony of two qualified witnesses (Annexes 6 and 7) is to the effect that the expropriated area, which was located in the valley along the Palomas River, was planted chiefly in corn and was very productive; that the valley was sub-irrigated, which assured a crop every year; and that the annual yield was about 12,000 hectoliters, which brought \$4.50 (pesos) per hectoliter. Both witnesses testified that the property was worth \$15 to \$20 (U. S. currency) per acre. The Commission considers that \$15 per acre or \$37.06 per hectare would be fair and adequate compensation for the lands affected.

The record (Annexes 3, 4, 5, 6 and 7) demonstrates that the land remaining in claimant's ranch after the expropriation was damaged as a result of the expropriation. The expropriated land lay along the Palomas River and the remaining land, as a result of the expropriation, was deprived of an accessible and permanent water supply and was divided in such a way as to make it less profitable to operate as a stock ranch. Claimant expresses a willingness to accept the allowance of \$15,000 for severance damages made by Commissioner Underwood. This Commission finds that an award in the amount of \$15,000 for severance damages is fair and reasonable.

Accordingly, the claimant is awarded the sum of \$65,040.30 (1,755 x 37.06) plus \$15,000 as severance damages, making a total award of \$80,040.30, with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from May 26, 1916.

DECISION No. 44-D

General Docket No. 2350 (part). Special Docket No. 816 (part). Claimant: Santo Domingo Silver Mining Company. Amount claimed: \$1,155,346.49. Amount awarded: \$5,546.49.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of

section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is a part of a larger claim in the amount of \$1,155,346.49 which was filed by memorandum notice with both the General and Special Claims Commissions and which was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 4, 1934, as a general claim.

As memorialized before the General Claims Commission the claim included the following items:

1. Value of personal property taken from the claimant by military authorities on May 25, 1913.....	\$1,250.00
2. Value of 10 bars of silver seized and confiscated by Constitutional forces on February 9, 1914	4,796.49
3. Value of silver (about 1,000,000 ounces) extracted from claimant's mine by unauthorized persons between November 1913 and June 1919.....	762,321.40
4. Damage to claimant's mine by reason of the unlawful operation by unauthorized persons	25,000.00
5. Loss of rental value for period claimant was forced to abandon its mine	361,978.60
	1,115,346.49

The American Commissioner designated pursuant to the General Claims Protocol of April 24, 1934, considered that items 3 and 4 of the claim fell within the jurisdiction of the General Claims Commission created under the Convention of September 8, 1923, and that items 1, 2 and 5 fell within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. He held that an award in the amount of \$286,718 should be made with reference to item 3 but that item 4 should be disallowed. The claimant having expressed no objection to the appraisal of the American Commissioner this Commission, on November 12, 1943, entered an award on the basis thereof conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942.

There accordingly remain for final disposition items 1, 2 and 5 of the claim in the total amount of \$368,025.09, which were classified by the American Commissioner as special.

In a brief filed with this Commission on behalf of the claimant on November 9, 1943, the amount originally claimed under item 5, namely, \$361,978.60 was reduced to \$24,000, on the ground that the appraisal made by the American Commissioner, as noted above, covered most of the losses involved in this item. The amount of \$24,000 for which claim is now made, is said to represent the reasonable rental value of the property during the years 1915-1916 for which period it is said no allowance was made by the American Commissioner.

At all times pertinent to the present claim, the claimant, an American national, was engaged in the operation of the Santo Domingo mine situated in the Municipality of Batopilas, State of Chihuahua, Mexico, which it had acquired by purchase about the year 1870. Its operations in that connection, following the outbreak of the revolution in 1910, were at times seriously disrupted and interfered with through the action of revolutionary, federal and other forces operating in the locality of the claimant's property.

It was alleged in the Memorial filed with the amount of \$1,250, Commission that the expropriation caused property involved was valuable seasonal land which produced forces for whose acts the 14,000 hectoliters of corn; that the property under the provisions of and that claimant's net income from the Convention of September 10, costs not exceeding \$2,500, was to establish the value of the property that as a result of the expropriation became useless and does not, in the opinion of necessary to feed cattle. An award of an indemnity in the full amount claimed. of depreciation in value is considered to be adequate with reference to

Commissioner determined upon the property involved in item 2, as a result of the acts (United States) the property forces, is adequately established as is the appraised value of the property. An award is accordingly made with respect of \$24,000 in this item 5, claimant seeks to recover the losses alleged to have been sustained from the enforced abandonment of the property during the years 1915-1916. It makes the contention that it is entitled to rental value of the mine during said years. The record contains no valid showing of the extent of actual damages, if any, upon which an award could be based. Such evidence as exists is found in the affidavits of W. S. Kirby-Smith and Doroteo Lopez annexed to the memorial. Kirby-Smith states that he was present at the mine from January 25, 1915 until September of the same year and that the mine was free of citizen miners and no depredations occurred throughout that period; that he left the mine in September 1915 and returned in June 1919, at which time he was told by Doroteo Lopez that the mine had been opened to the general public when he, Kirby-Smith, left in September 1915 and that for about a year the mine continued to be worked by citizens and some soldiers "but that not very much silver was obtained." Doroteo Lopez, who describes himself as "watchman or guard" of the Santo Domingo mining properties during the period in question, states in his affidavit annexed to the memorial: "From 1915 to 1916 the work in the mines did not give a good result, there being periods of exploration." In the opinion of the Commission the evidence contained in the record does not warrant an allowance with respect to this item of claim.

For reasons set forth above, an award is made in favor of the claimant in the amount of \$5,546.49 without interest.

DECISION No. 17-C

General Docket No. 2375. Claimant: H. Milne McIntosh. Amount claimed: \$64,712.53. Amount awarded: \$43,576.95.

This claim, in the sum of \$64,712.53, with interest, is predicated upon losses resulting in 1917 and 1922 from the taking, removing and carrying away by the Mexican Government of the rails and railroad material from the railroad leading from the station of Fenix on the line of the National Railways of Mexico near Piedras Negras, Coahuila, to a mine, owned together with said railroad by Fenix Coal Company, Limited, S. A., a Mexican company hereinafter called the company. H. Milne McIntosh, the claimant, was the owner of all of the company's bonds.

The claimant is an American citizen, having been naturalized on April 15, 1885. The company was organized in Mexico in 1910. It

authorized by its charter to issue bonds to the extent of 600,000 pesos. It issued bonds in the amount of \$250,000 on February 5, 1920, in denominations of \$1,000 each, of which 225 were issued to L. Mackey.

The bonds thus issued bore interest at the rate of ten per cent per annum to be paid annually, and were to mature and be paid on February 5, 1920. A trust deed dated February 5, 1910, named Rafael Hernández as trustee for the bondholders. The bonds provided that if default in payment of interest should continue for three months after such interest became due, then all the bonds should be deemed to have matured, and payment of principal and interest might be exacted. The trust deed also contained a condition under its clauses numbered 10, 14, 15, 16, 23 and 24 and in accordance with the applicable provisions of the Civil Code of the Federal District whereby, in case of default in payment of principal or interest at the proper time, "all the rights, privileges and franchises . . . machinery, buildings, insurance policies, railroads, rolling stock, appliances, livestock and tools, or other properties, of which the company is now the owner or which it may hereafter acquire" should be considered as having automatically been ceded to the trustee for the benefit of the bondholders. The trust deed was approved at a meeting of the stockholders of the company on February 6, 1910, and was protocolized on February 18, 1910. Upon the default of payment of interest on the bonds, as therein provided, the property of the company accordingly passed automatically to Hernández, trustee, in 1913, when the company could not operate its properties due to revolutionary activities.

Proceedings were instituted on July 3, 1919, by way of "Jurisdicción Voluntaria" before the Court of First Instance at Piedras Negras, Coahuila, Mexico, to confirm the ownership of the properties of the company which had become vested in Hernández in 1913, as aforesaid. A decree of the court conferring such ownership was made on July 24, 1919, and such action was concurred in by the stockholders of the company at a meeting on December 31, 1919.

In 1917 and again in June 1922, parts of the railroad tracks, rails and other sundry railroad equipment belonging to the company and built by it were, without payment therefor, taken up and carried away by the National Railways of Mexico, which was from December 1914 to December 1924 under the control, management and administration of the Mexican Government. See claim of *Walter Everett* (United States v. Mexico) General Docket No. 2218. The answer of Mexico admits that a certain amount of track was raised by the National Railways. Likewise, admissions as to seizure are made in the annexes furnished by the respondent government in its answer.

In the defenses set up by the respondent government, the chief issues raised concern the ownership of the aforesaid bonds, and the extent of damages. Claimant relies upon an affidavit of Rafael L. Hernández dated March 18, 1927 to establish his ownership to the bonds in question.

Hernández, after referring to the takings by the Mexican Government, states in his affidavit:

With respect to item 1 mentioned above in the amount of \$1,250, it is satisfactorily established that the property involved was taken from the claimant by members of forces for whose acts the Government of Mexico assumed liability under the provisions of Article III of the Special Claims Convention of September 10, 1923. The evidence relied upon to establish the value of the property however is somewhat meager and does not, in the opinion of the Commission, warrant an indemnity in the full amount claimed. An award of \$750 is considered to be adequate with reference to this item.

Loss of the property involved in item 2, as a result of the acts of Constitutionalist forces, is adequately established as is the value of the property. An award is accordingly made with respect to this item in the amount claimed, namely, \$4,796.49.

Under item 5, claimant seeks to recover the losses alleged to have been sustained from the enforced abandonment of the property during the years 1915-1916. It makes the contention that it is entitled to rental value of the mine during said years. The record contains no valid showing of the extent of actual damages, if any, upon which an award could be based. Such evidence as exists is found in the affidavits of W. S. Kirby-Smith and Doroteo Lopez annexed to the memorial. Kirby-Smith states that he was present at the mine from January 25, 1915 until September of the same year and that the mine was free of citizen miners and no depredations occurred throughout that period; that he left the mine in September 1915 and returned in June 1919, at which time he was told by Doroteo Lopez that the mine had been opened to the general public when he, Kirby-Smith, left in September 1915 and that for about a year the mine continued to be worked by citizens and some soldiers "but that not very much silver was obtained." Doroteo Lopez, who describes himself as "watchman or guard" of the Santo Domingo mining properties during the period in question, states in his affidavit annexed to the memorial: "From 1915 to 1916 the work in the mines did not give a good result, there being periods of exploration." In the opinion of the Commission the evidence contained in the record does not warrant an allowance with respect to this item of claim.

For reasons set forth above, an award is made in favor of the claimant in the amount of \$5,546.49 without interest.

DECISION No. 17-C

General Docket No. 2375. Claimant: H. Milne McIntosh. Amount claimed: \$64,712.53. Amount awarded: \$43,576.95.

This claim, in the sum of \$64,712.53, with interest, is predicated upon losses resulting in 1917 and 1922 from the taking, removing and carrying away by the Mexican Government of the rails and railroad material from the railroad leading from the station of Fenix on the line of the National Railways of Mexico near Piedras Negras, Coahuila, to a mine, owned together with said railroad by Fenix Coal Company, Limited, S. A., a Mexican company hereinafter called the company. H. Milne McIntosh, the claimant, was the owner of all of the company's bonds.

The claimant is an American citizen, having been naturalized on April 15, 1885. The company was organized in Mexico in 1910. It

was authorized by its charter to issue bonds to the extent of 600,000 pesos. It issued bonds in the amount of \$250,000 on February 5, 1910, in denominations of \$1,000 each, of which 225 were issued to Frank L. Mackey.

The bonds thus issued bore interest at the rate of ten per cent per annum to be paid annually, and were to mature and be paid on February 5, 1920. A trust deed dated February 5, 1910, named Rafael L. Hernández as trustee for the bondholders. The bonds provided that if default in payment of interest should continue for three months after such interest became due, then all the bonds should be deemed to have matured, and payment of principal and interest might be exacted. The trust deed also contained a condition under its clauses numbered 10, 14, 15, 16, 23 and 24 and in accordance with the applicable provisions of the Civil Code of the Federal District whereby, in case of default in payment of principal or interest at the proper time, "all the rights, privileges and franchises . . . machinery, buildings, insurance policies, railroads, rolling stock, appliances, livestock and tools, or other properties, of which the company is now the owner or which it may hereafter acquire" should be considered as having automatically been ceded to the trustee for the benefit of the bondholders. The trust deed was approved at a meeting of the stockholders of the company on February 6, 1910, and was protocolized on February 18, 1910. Upon the default of payment of interest on the bonds, as therein provided, the property of the company accordingly passed automatically to Hernández, trustee, in 1913, when the company could not operate its properties due to revolutionary activities.

Proceedings were instituted on July 3, 1919, by way of "Jurisdicción Voluntaria" before the Court of First Instance at Piedras Negras, Coahuila, Mexico, to confirm the ownership of the properties of the company which had become vested in Hernández in 1913, as aforesaid. A decree of the court conferring such ownership was made on July 24, 1919, and such action was concurred in by the stockholders of the company at a meeting on December 31, 1919.

In 1917 and again in June 1922, parts of the railroad tracks, rails and other sundry railroad equipment belonging to the company and built by it were, without payment therefor, taken up and carried away by the National Railways of Mexico, which was from December 1914 to December 1924 under the control, management and administration of the Mexican Government. See claim of *Walter Everett* (United States v. Mexico) General Docket No. 2218. The answer of Mexico admits that a certain amount of track was raised by the National Railways. Likewise, admissions as to seizure are made in the annexes furnished by the respondent government in its answer.

In the defenses set up by the respondent government, the chief issues raised concern the ownership of the aforesaid bonds, and the extent of damages. Claimant relies upon an affidavit of Rafael L. Hernández dated March 18, 1927 to establish his ownership to the bonds in question.

Hernández, after referring to the takings by the Mexican Government, states in his affidavit:

“ . . . and I hereby certify that Mr. H. Milne McIntosh of Chicago, Illinois, United States of America, is now and was at all the times when the said properties and effects were appropriated and carried away by the National Railways of Mexico, the sole owner of record of the entire issue of said Bonds, and as such sole owner suffered the entire loss and damages aforesaid; and that the claim for such loss and damage belongs entirely to the said H. Milne McIntosh, and no interest in said claim or in any part thereof is now or ever has been asserted by me; and that any proceedings which may be instituted by the said H. Milne McIntosh for the collection of said claim for damages sustained by him have my full authority and approval in my capacity as Common Representative of the Bondholders, that is, as Trustee for them, under the suspensive contract of February 5, 1910.

“The properties and effects appropriated and carried away as hereinbefore set forth have never been restored or replaced, and no indemnification, or its equivalent, for the loss and damage which resulted from the taking of said properties and effects, or any part, thereof, has ever been received by me, or by the Bondholder of record Mr. H. Milne McIntosh, or by any other person.

“As Trustee for the Bondholders of the Fenix Coal Company, Limited, Sociedad Anónima, I hold in my possession, in Mexico City, for and on behalf of said H. Milne McIntosh, of Chicago, State of Illinois, United States of America, the entire issue of Two Hundred and Fifty Thousand Dollars, money of the United States of America, of Bonds, being Two Hundred and Fifty Bonds of One Thousand Dollars each; and I certify that the said H. Milne McIntosh is the sole owner of record of the entire issue of said Bonds.”

Commissioner Underwood held that said affidavit was insufficient to establish ownership and, in his opinion, stated:

“In effect the American Agent is asking the Commissioners to accept the statement of Mr. Hernández, which I have quoted, [quoted above] without the support of any corroborative evidence, as laying a proper predicate for the allowance of an award. For my part, I am unwilling to accept it.”

In the petition for review claimant contends that such holding by Commissioner Underwood was erroneous and urges that the affidavit of Hernández makes out a *prima facie* case of ownership. The petition was granted by Order No. 33 of this Commission.

The Commission is of the opinion that the evidence as to proof of ownership of the bonds in question supports claimant's claim of ownership thereto. Hernández, as trustee, whose testimony is above quoted, is in possession of the bonds and is enabled to know the facts respecting the ownership thereof. As trustee, he occupies a position of public trust for the discharge of the duties of which he may be answerable under Mexican law. The weight which evidence is entitled to be given is to be determined by the Commission. Corroborative evidence might add weight to the Hernández testimony. However, in the absence of such corrobora-

tion the Commission is unwilling to disregard and hold for naught the testimony of a witness so highly qualified to give evidence of ownership of the bonds as is Hernández. With respect to the absence of corroboration, it may also be noted that H. Milne McIntosh died on September 3, 1932, of which Commissioner Underwood was unaware. See Petition for Review, p. 1; Opinion of Commissioner Underwood, p. 5. The Commission is of the opinion that, in the circumstances of this case, the affidavit of Hernández, trustee, is sufficient to establish claimant's title to the bonds in question.

As owner of the bonds claimant had the right to assert this claim. *Heny* claim, American Venezuelan Commission of 1903. *Ralston's Report*, 14, 23; *McPherson* claim (United States v. Mexico) *Opinions of Commissioners* (1927) 325.

Upon the question of damages, the amount claimed for the railroad property seized in 1917 is \$24,649.32, and \$40,063.21 in 1922, totalling \$64,712.53. The specific items of damage are set forth in affidavits and reports made by one Theodore N. Picnot, a qualified civil engineer and consultant who visited and examined the property in April, 1927. His calculation of the damage is as follows:

As to 1917

152 tons rails at \$30 for relaying rails	\$4,560.00
Duties at \$18	2,736.00
17,222 pounds, angle-bars at 0.02	344.44
Duties	149.94
17,700 pounds at 0.03	531.00
Duties	171.60
4,000 pounds bolts at 0.05	200.00
Duties	45.50
6 switch sets at \$125	750.00
Duties, 6 tons	165.00
Rebuilding roadbed, \$750 per kilometer, 3.10 kilometers	2,325.00
Surfacing and laying track, spiking, bolting at \$530 per kilometer..	1,643.00
1 kilometer of unladen rails taken, 49 tons	1,470.00
Duties	882.00
Ties, 6,778, cost with laying down at Fenix Station, at \$1.28 each..	8,675.84
	24,649.32

As to 1922

268 tons rails at \$30 for relaying rails	8,040.00
Duties at \$18	4,824.00
31,764 pounds, angle-bars at 0.02	635.28
Duties at 10 p.c. and 3 per kilo	276.52
41,075 pounds spikes at 0.03	1,232.25
Duties as above	396.97
10,920 pounds bolts at 0.05	546.00
Duties as above	190.85
11 switch sets, including targets, rods, plates, guard rails and frogs, purchasable at \$125	1,375.00
Duties, 10 p.c. and 3 per kilo	302.50
Rebuilding roadbed, estimated to cost \$750 per kilometer, 5.49 kilometers	4,117.50
Surfacing and laying track, spiking, bolting, estimated to cost \$530 per kilometer, 5.49 kilometers	2,909.70
11,888 ties, estimated to cost \$1.28 each, laid down at Fenix Station.	15,216.64
	40,063.21
Total:	
1917	24,649.32
1922	40,063.21

It is noted that the claim thus asserted includes items relating to the rebuilding of the roadbed, such as surfacing and laying of tracks, spiking and bolting, and the duties payable in connection with the importation of the materials into Mexico. These items aggregate \$8,117.54 for 1917, and \$13,018.04 for 1932, or a total of \$21,135.58, as follows:

<i>As to 1917</i>		
Duties at \$18 for 152 tons rails		\$2,736.00
Duties on angle-bars		149.44
Duties on spikes		171.60
Duties on bolts		45.50
Duties on switch sets		165.00
Duties on unlaidd rails		882.00
Rebuilding roadbed	\$2,325.00	
Surfacing and laying track, spiking and bolting.....	1,643.00	3,968.00
		8,117.54
<i>As to 1922</i>		
Duties at \$18 for 268 tons rails		4,824.00
Duties on angle-bars		276.52
Duties on spikes		396.97
Duties on bolts		190.85
Duties on switch sets		302.50
Rebuilding roadbed	\$4,117.50	
Surfacing and laying track, spiking and bolting.....	2,909.70	7,027.20
	7,027.20	13,018.04
Total:		
1917		8,117.54
1922		13,018.04
		21,135.58

This Commission does not regard the foregoing to be proper items of damage. The railroad was not in operation at the times when the seizures were made. Operation was suspended in 1913 because of revolutionary activities. (Union Bridge Company (United States v. Great Britain) *Nielsen's Report* (1926) 371.) Under the circumstances the award should be limited to the value of the material actually taken. Eliminating the aforesaid sum of \$21,135.58 from the claim of \$64,712.53, leaves the sum of \$43,576.95 which the Commission deems proper and for which the claimant is entitled to be reimbursed.

Accordingly, the claimant is awarded the sum of \$43,576.95 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, as follows:

On \$16,531.78 from July 1, 1917

On \$27,045.17 from July 1, 1922

An application having been made by Harold N. Marsh of Washington, D. C., attorney for claimant, pursuant to section 5(c) of the Act aforesaid, for determination and apportionment by the Commission of his fees for services rendered with respect to this claim, which application is supported by written agreements for attorneys' fees in the amount of 25 per centum of the award and the written consent to the payment thereof by the executors of the estate of said claimant, now deceased, the Commission finds upon the entire record that the amount requested for legal services is just and reasonable and, accordingly, awards to Harold N. Marsh 25 per centum of the aforesaid award to claimant.

DECISION No. 11-D

General Docket No. 2415 (part). Special Docket No. 1081 (part).
 Claimant: Wells Fargo and Company. Amount claimed: \$248,571.19.
 Amount awarded: \$52,604.79.

This claim is before the Commission pursuant to the provisions of paragraph 5 of section 3 (a) of the Settlement of Mexican Claims Act of 1942.

The claim here involved is a part of a considerably larger claim which was filed with both the General and Special Claims Commissions. The entire claim was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *general* claim.

The American Commissioner designated under the General Claims Protocol of April 24, 1934, in his appraisal of the claim, classified the claim to the extent of \$248,571.19 as a *special* claim and the balance thereof as a *general* claim.

In its Decision No. 22, dated June 12, 1944, this Commission denied claimant's petition for review with reference to the portion of the claim classified and appraised by the American Commissioner as a *general* claim and entered an award upon the basis of the appraisal.

There remains for determination by this Commission the part of the claim classified by the American Commissioner as *special*, namely, \$248,571.19.

This amount is computed as follows:

Physical property lost up to December 31, 1914.....	pesos	191,353.88
Cash taken	pesos	28,018.14
Loss of profits, September-December, 1914.....	pesos	372,132.20
	pesos	591,504.19
Interest on this amount at 6% for 11 1/2 years	pesos	394,780.20
	pesos	986,284.39
Said to be equivalent in United States currency to.....		\$493,142.19
Claimant's one-half interest		\$246,571.10
¹ This amount is incorrectly computed in the appraisal of the American Commissioner as \$248,571.19.		

The circumstances underlying this claim are set forth in some detail in the aforesaid Decision No. 22 of this Commission with reference to the *general* portion of the claim and need not be repeated here.

As pointed out in that decision and in the appraisal of the claim by the American Commissioner, the property of the claimant, for several months preceding the actual taking over of the railroads by the Mexican Government in December 1914, had been subjected to serious interference and seizure by forces of Carranza and other military factions while in the conduct of military operations in opposition to each other.

In determining that the portion of the claim arising before December 31, 1914 was properly to be considered as a *special* claim, the American Commissioner designated under the Protocol of April 24, 1934, stated that although it appeared that the taking over of the railroads in December 1914 was effected upon the ground of military necessity, there was no suggestion that the operation of claimant's express business by the Constitutionalist

Government after December 1914 had been conducted for military purposes or even under military direction. He concluded that the period of military intervention, manifested by the acts of the several forces in making seizures for transitory military purposes, or in committing acts of military spoliation, terminated about the end of 1914. He accordingly regarded December 31, 1914 as the dividing line between the *general* and *special* portions of the claim.

While claimant in its petition for review expressed the view that the entire claim should have been classified as *general*, it also conceded that in the event a division were to be made

“... the dividing line between acts of military forces and acts by the Government, January 1, 1915, as designated by the American Commissioner, is as nearly correct as it is possible to be.”

On the basis of the record presented, this Commission finds no valid ground for changing the classification of the claim made by the American Commissioner.

With respect to the claim for 219,371.99 pesos relating to the value of personal property and cash lost by the claimant in 1914, as a result of the acts of forces comprehended by Article III of the Special Claims Convention, the Commission regards these losses, with the exception of an item of 2,600.59 pesos, as sufficiently well established to warrant an indemnity in the amount claimed therefor. The said item of 2,600.59 pesos was eliminated as a *special* claim in a memorandum filed by the claimant with the Commission on August 24, 1944. This item is accordingly reduced to 216,771.40 pesos.

The item of claim in the amount of 372,132.20 pesos, representing loss of profits for the period September-December 1914, stands upon a different footing.

Although the record indicates that the claimant realized substantial profits from its business for several years preceding the year 1914, the Commission does not consider that, under the circumstances here disclosed, a proper measure of damages is to be found in the average monthly net profits during such preceding years, as suggested by the claimant. It is not clear that the claimant was deprived of all earnings from its property during that period, nor is it possible to reach any definite conclusion as to the extent to which claimant's profits may have been affected by the generally disturbed conditions had not the bulk of its property been seized. In the face of these and other uncertainties, the Commission is constrained to fix claimant's loss under this head at one-fourth of the amount claimed (372,132.20 pesos) or 93,033.05 pesos.

The sum of this item and that representing the value of personal property and cash lost or destroyed (216,771.40 pesos) is 309,804.45 pesos. Claimant's interest therein as above stated is one-half or 154,902.22 pesos. This is equivalent in United States currency at the rate of exchange (\$0.3396) applicable at the time of claimant's loss, to \$52,604.79.

An award is accordingly made in favor of the claimant in the amount of \$52,604.79, without interest.

DECISION No. 21-D

General Docket No. 2417. Special Docket No. 2042. Claimants: Richard F. Raab, Edward F. Robertson, Hattie Harburger as Trustees in dissolution of Harburger and Stack. Amount claimed: \$2,625.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. The claim was presented by memorial to the General Claims Commission for the sole purpose of determining the question of jurisdiction.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that this claim was within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. Claimants have expressed no disagreement with that determination and have filed no additional evidence in support of the claim under section 3(c) of the Settlement of Mexican Claims Act of 1942.

Claimants seek to recover the sum of \$2,625, said to be the amount of a forced loan paid by the American firm of Harburger and Stack, to the Governor and military commander of the State of Tabasco on or about December 27, 1916. There is no evidence to establish either the nationality of the above-mentioned firm or the American citizenship of any of the persons having a legal or beneficial interest in the claim. Moreover, the evidence tends to show that the aforesaid payment was made as an advance on future taxes.

Upon the entire record, this Commission concludes that the claim must be disallowed.

DECISION No. 23-D

General Docket No. 2441 (part). Special Docket No. 677 (part). Claimant: O. W. Britson in his own right and as attorney in fact for the estate of I. O. Britson. Amount claimed: \$1,000.00. Award: disallowed.

This claim for \$1,000 is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was originally part of a much larger claim which was filed by memorandum notice with both the General and Special Claims Commissions. Said claim was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim.

This item was submitted by memorial to the General Claims Commission solely for the purpose of determining the question of jurisdiction. The balance of the claim was abandoned. The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that the item of claim here involved fell within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. Claimants have indicated no disagreement with such determination and have filed no additional evidence in support of the claim under the provisions of section 3(c) of the Settlement of Mexican Claims Act of 1942.

It is alleged that in 1918 bands of armed revolutionary forces came upon claimants' property known as the San Jose de las Rusias ranch in the State of Tamaulipas, and carried away horses, food, saddles and other property of a value of about \$1,000, United States currency. Information with respect to these losses is contained in a statement of O. W. Britson, one of the claimants, to the American Consul in Matamoros, which statement is set out in a report by the latter to the Secretary of State. It is not shown that said statement was under oath and there are no corroborating statements.

The Commission concludes that the evidence in the record would not warrant an award and accordingly holds that the claim must be disallowed.

DECISION No. 20-D

General Docket No. 2456. Special Docket No. 2252. Claimant: Harloe H. Hamilton. Amount claimed: \$50,000.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

It was filed by memorandum notice with both the General and Special Claims Commissions and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. The claim was filed by memorial with the General Claims Commission for the sole purpose of procuring a determination upon the question of jurisdiction. The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that the claim falls within the jurisdiction of the Special Claims Convention of September 10, 1923. The claimant has indicated no objection to that conclusion and has filed no additional evidence in support of the claim under section 3(c) of the Settlement of Mexican Claims Act of 1942.

The files contain statements of claimant to the effect that in April 1916 he was arrested by Carrancista forces in the State of Oaxaca on charges of being implicated in certain crimes allegedly committed four years previously; that he was held incommunicado for several days and subjected to indignities and mistreatment while in the custody of the authorities for a period of several months. These statements are not made under oath and are not corroborated by persons having personal knowledge of the facts. Upon the entire record, the Commission concludes that the charges have not been sustained.

Accordingly, the claim is disallowed.

DECISION No. 23-C

General Docket No. 2484. Claimant: Henry H. Burton. Amount claimed: \$3,597,980.00. Amount awarded: \$231,491.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 39 dated July 5, 1944).

This claim, in the amount of \$3,597,980, is predicated upon a denial of justice resulting from the acts of administrative and judicial officials of the Mexican Government in depriving Mrs. María Amparo Ruiz de Burton, mother of Henry H. Burton, of her ownership of two *sitios* of land (8,678.8 acres) known as Ensenada de Todos Santos.

In the memorandum of claim filed August 29, 1925 with the General Claims Commission, United States and Mexico, in the name of Henry H. Burton, claimant sought restoration of two properties known as Ensenada de Todos Santos and San Antonio de las Minas, respectively, with proper allowance of damages. In the alternative, there was requested payment of the value of the two properties and damages. No specific amount was stated. It was alleged therein that the former property embraced one million acres more or less, and the latter, fifty thousand acres more or less.

In the memorial filed with the same Commission on April 17, 1936, the claim was limited to the value of two *sitios de ganado mayor* in Ensenada de Todos Santos. It was stated therein that Mrs. Burton was deprived of this property through palpably unjust decisions of Mexican administrative and judicial officials; that Mrs. Burton having died, an award should be rendered on behalf of Harry B. Lind, as administrator of her estate, in the amount of \$3,597,980 with interest; and that it appeared that on or about July 28, 1925, Henry H. Burton, sole surviving heir of Mrs. Burton, assigned such interest as he had in this claim to Harry B. Lind but that there was a dispute as to the effect and validity of that assignment.

The evidence shows that in 1804 José Manuel de Ruiz petitioned for and obtained from the Spanish Colonial Government a tract of land known as Ensenada de Todos Santos, possession of which was granted and given on July 15, 1805, to the extent of two *sitios de ganado mayor* or 8,678.8 acres, abutting on the Bay of Todos Santos and extending inland for a considerable distance.

Upon the death of José Manuel de Ruiz in 1853 the property descended to his four daughters. On May 10, 1853, three of them conveyed in fee simple their undivided three-fourths interest in said property to Mrs. María Amparo Ruiz de Burton, who was the daughter of one of them. Pedro Gastelum succeeded to the one-fourth undivided interest of the fourth daughter. Thereafter, on March 17, 1871, Mrs. Burton and Pedro Gastelum executed a compromise agreement respecting and defining the property rights of each in said property.

For some years subsequent to 1853, the date of Ruiz's death, Mrs. Burton's ownership of the land in question was recognized by Mexican authorities. On July 21, 1884 the Mexican Government granted to Louis Huller & Company, under a colonization contract, control of all the territory of Lower California between the parallels of 29 degrees and 32 degrees, 42 minutes, subject to the rights of third parties who might have a prior claim to said land. Mrs. Burton's land was located within said parallels and said grant to Huller & Company placed her in the position of having to defend her title. On April 3, 1885, Huller & Company con-

veyed all of its rights to the International Colonization Company, a Connecticut corporation, hereinafter referred to as International. On May 4, 1886, despite his agreement of 1871 with Mrs. Burton, *supra*, Pedro Gastelum purported to convey the two *sitios* of Ensenada de Todos Santos to D. Maximiliano Bernstein. On March 17, 1887 the latter conveyed the same to International, which took possession of Mrs. Burton's property with full knowledge of the prior grant in 1805 to her grandfather, José Manuel de Ruiz. On March 29, 1887 International applied to the Mexican Government for new title of ownership to include the said two *sitios* of Ensenada, and on April 4, 1887 the Minister of Public Works, Colonization and Commerce declared that the lands were the exclusive property of International. In 1888, Mrs. Burton obtained an order from the President of Mexico reversing the prior ruling purporting to confirm the validity of International's title. International, nevertheless, retained possession of the two *sitios* and initiated an extensive advertising campaign for the sale of town and land lots in Ensenada, resulting during May, June and up to July 9, 1887, in more than \$1,800,000 of sales.

On May 15, 1889 Mrs. Burton instituted suit in the Court of First Instance of the Northern District of Lower California against International and Pedro Gastelum for possession of the two *sitios*. The action was based on the original grant in 1805 to her grandfather, Ruiz; the transfer by his three daughters of their interest therein to Mrs. Burton on May 10, 1853; the agreement between her and Pedro Gastelum of March 17, 1871; and the various acts of recognition by Mexican Government officials as to her ownership of the land in question.

From the inception to its final determination this suit extended over a period of about five years through long and complicated litigation in various courts of Mexico. The evidence adduced on this phase of the claim is in itself voluminous. Suffice it to state that the courts held that Mrs. Burton had failed to prove her title in and to the land in question, and they also refused to examine the evidence offered by her relating to the agreement between her and Pedro Gastelum of March 17, 1871. The final act in the denial of justice was the decision of the Supreme Court of Mexico of June 29, 1894 in refusing to grant *amparo*.

Commissioner Underwood, in his memorandum opinion, held that Mrs. Burton had suffered a denial of justice and in that connection stated that the "essence of the complaint is that there resulted from these court decisions a palpably unjust determination against her [Mrs. Burton] and in favor of the International Colonization Company, which claimed the 2 *sitios* under the same original title which Mrs. Burton asserted." He referred to the majority opinion in the Fourth Chamber of the Superior Court of Justice of the Federal District and particularly to the recital in that opinion that one of the documents presented by Mrs. Burton was false, tampering therewith having been shown by the testimony of experts who treated the document with chemicals. He stated:

"It was found that the word 'hacia' had been changed to 'hasta' so that the lines of the original grant instead of run-

ning towards the Sierra Madre ran up to the Sierra Madre, thus making out a claim for 68 *sitios* instead of 2 *sitios* (ibid., 651 et seq.). The majority held that the document was invalid and could not establish Mrs. Burton's claim. The Judge who wrote the minority opinion said that the testimony of the experts was contradictory (ibid., 676), it being pointed out that if the title were defective the International Colonization Company was claiming under that same title. The central point of the case was whether or not the compromise contract of May [sic] 17, 1871 should be given full effect . . .

"In this connection the majority opinion stated: (ibid., 663).

"THEREFORE 17. That the instrument of the agreement made between the plaintiff and Pedro Gastellum [sic] does not require examination since the documents which serve as a basis for her action have been destroyed, this agreement can not in any way influence the final decision to be rendered."

"This is the point which seems to me to be necessarily the primary legal point in the case, and an examination of the petition filed by Mrs. Burton before the Judge of First Instance on May 15, 1889, in her suit against Pedro Gastellum [sic] and the International Colonization Company shows very well that this agreement of May [sic] 17, 1871 was well pleaded . . ."

Commissioner Underwood stated that the Agent of the United States had relied heavily in the memorial upon the agreement of March 17, 1871 between Mrs. Burton and Gastellum and that the Mexican Agent "said nothing to defend the courts on account of having ignored it, merely saying that even if there were a technical error on the part of the courts such circumstance could not be advanced as a basis for international liability." He pointed out further that the agreement was again strongly relied upon in the brief of the United States but that the Mexican Agent had not made any mention thereof in the reply brief. He then stated:

" . . . I must give this omission its proper significance, for clearly enough the main points of the litigation, as asserted by the American Agent, are correct: namely, both Mrs. Burton and the International Colonization Company claimed the 2 *sitios* under the same grant of 1804; the alleged agreement between Pedro Gastellum [sic] and Mrs. Burton of 1871 was either effective or it was not effective; if it was effective Pedro Gastellum [sic] could not have made any valid transfer subsequent to that agreement. Therefore, when the International Colonization Company was claiming under the same title, the majority of the Superior Court of the Federal District should have had a better reason for ignoring this alleged agreement than by saying that one of the principal documents had been falsified and that Mrs. Burton did not prove her title. I must conclude that the refusal of the majority to consider the main point in the litigation, which was well proved, was a palpable denial of justice. The Supreme Court of Justice refused to grant *amparo*, so Mrs. Burton's injuries were never redressed."

The petition for review alleges error in two respects: (1) the failure of the American Agency to include in the memorial a demand for damages for the entire tract of land of about one million acres, and (2) the failure of Commissioner Underwood to appraise the per acre value "at an amount even remotely approximating the actual damages suffered." In addition thereto it is contended that the appraisal "should properly have been *with interest*."

On review, it is the opinion of this Commission that the first contention lacks merit. The memorial filed herein, the brief on behalf of claimant and the evidence adduced are all based on the denial of justice resulting to Mrs. Burton as to the two *sitios* of Ensenada de Todos Santos. There is no proper basis for changing the claim now.

As to the contention pertaining to interest, it is our opinion that it is not meritorious. Commissioner Underwood properly denied the demand for interest when he stated, at page 13 of his memorandum opinion:

"I do not think that interest should be allowed. While through the denial of justice Mrs. Burton was deprived of a substantial legal right, I can not hold on this record that she was deprived of the ownership of the property. She had therefore been a vigorous claimant for the title, but it can not be said that she was ever in possession, paying taxes, and exercising the rights which usually pertain to owners."

We are of the opinion that Commissioner Underwood was well within the latitude allowed by international practice in not awarding interest. See Borchard, *The Diplomatic Protection of Citizens Abroad* (1925) 428. In any event petitioner has not made a *prima facie* case to the contrary.

The second contention set forth in the petition appears to be partially meritorious. Certainly claimant cannot be heard to make claim for values such as International set up in its sales campaign and in its attempted or pretended development of the area, with which Mrs. Burton was, of course, in no way concerned or involved. However, in the opinion of this Commission the land is deemed to have a higher value than Commissioner Underwood's appraisal. In thus awarding a higher value as fair and just compensation, we shall first determine the area of land upon which such award should be made.

The Decree of Title from Governor de Arrillaga, dated July 10, 1804, authorized Sergeant Salgado to proceed to Ensenada de Todos Santos and put in possession thereof Lieutenant José Manuel Ruiz in conformity with what is ordered in similar concessions. The Proceedings of Possession dated July 15, 1805 recites that Salgado, "in fulfillment of the preceding order . . . proceeded to the marking and measurement of two leagues in the following form." There follows a description of the land having dimensions of 5,000 varas by 10,000 varas and bounded on the west by the seashore. Salgado then states: ". . . I took by the hand Don José Manuel Ruiz, Lieutenant of the Company of the said Presidio, and I introduced him into the aforesaid lands ('sitios') . . . which I gave him in the name of his Majesty."

As pointed out above, in 1853 the owner, José Manuel Ruiz, died and the land was inherited by four daughters, three of whom deeded their undivided three-fourths interest to Mrs. María Amparo Ruiz de Burton. Pedro Gastelum succeeded to the one-fourth undivided interest of the other daughter.

The agreement of March 17, 1871 and the addenda thereto define the respective rights of Mrs. Burton and Pedro Gastelum in the land, the title of which "on the 10th of July, 1804, was granted by Governor Arrilaga [*sic*] to the grandfather of the aforesaid Dona María Amparo Ruiz de Burton." That agreement contains the following:

"That the lands known as 'Aguajito' and 'the Gallo' shall belong exclusively to Don Pedro Gastelum, and besides one league and a quarter for the portion corresponding to him in the Ensenada title as the legitimate representative of the aforesaid Don Francisco Gastelum and Dona Salvadora Ruiz. Being well understood that the said league and one quarter agreed upon to belong to Don Pedro Gastelum shall be on the south of the said 'Gallo' and 'Aguajito,' and that nothing more shall belong or appertain to him. All other lands embraced in the concession of the Ensenada de Todos Santos, according to the title given in the time of the Colonial Government, and confirmed by the Supreme Government of the Republic, belong to and appertain to Dona Amparo Ruiz de Burton, together with all other rights corresponding thereto, or which henceforth may correspond."

The addenda contains the following: ". . . that neither Senor Gastelum nor his heirs shall claim any more land than one league and one quarter."

The Commission finds no basis for the assertion of a claim for one million acres as set forth in the petition for review. The affidavit of Harry B. Lind, verified July 5, 1934, has copies from the official archives of Mexico attached, among them being Document 13, a map of the ranch of La Ensenada de Todos Santos, dated December 18, 1871, which recites that the dimensions of same are 10,000 yards by 5,000 yards. Another affidavit by Harry B. Lind, dated August 28, 1935, has attached to it copies of the record of the Court of First Instance of the Northern District of Lower California, among them being the petition to the Court, dated May 15, 1889, by which the action of Mrs. María Amparo Ruiz de Burton was instituted and in which she asserted her title to the Ensenada de Todos Santos tract based upon the grant of same in the year 1804 to José Manuel Ruiz; the inheritance of his four daughters; the deed of May 10, 1853, of three of said daughters to her of their three-fourths interest in said tract; and the compromise agreement between her and Pedro Gastelum, dated March 17, 1871. The dissenting opinion of Judge Pablo Gonzalez Montez of the Fourth Chamber of the Superior Court of Justice of the Mexican Federal District in 1893 distinctly states that, only and exclusively, the two tracts sold by Pedro Gastelum were in litigation (Mem., Vol. 1, p. 674, Annex 33). The basis of the claim is a denial of justice resulting from a judicial decision in the action brought by Mrs. Burton in which the court held that she did

not have legal title to the land in question. In that action she relied on the compromise agreement of March 17, 1871 to support her claim of title, which the court refused to consider (*ibid.*, p. 360). Claim was asserted to only two *sitios* in said suit. The title of 1804 is the basis and it describes two *sitios*. Therefore, the partition of 1871 must be applied to the two *sitios* and no more, because there was no more jointly owned. It follows, therefore, that when one and one-quarter *sitios* were granted to Gastelum there can be no more than three-quarters of one *sitio* left for Mrs. Burton.

The Commission finds that Ensenada de Todos Santos consisted of two leagues or 8,678.8 acres; that under the compromise agreement of 1871 Mrs. Burton was declared to be, and became, the owner of three-fourths of a league, or 3,254.55 acres of the said two leagues; and that the townsite of Ensenada was included in said three-fourths of a league.

The record contains evidence of values ranging from \$20 average price per acre (Mem., Vol. 2, pp. 1154-1156, Annex 49); \$40 and \$150 per acre (*ibid.*, pp. 1161-1162, Annex 50); to \$250 per acre (*ibid.*, p. 1193, Annex 53). It appears that part of the land was hilly, part adapted to grazing, and some portions for farming (*ibid.*, pp. 1158-1160, Annex 50). A considerable frontage on the sea enhanced its value to some degree.

In view of all the evidence the Commission concludes that on June 28, 1894, the date of the decision of the Supreme Court of Mexico, the said three-fourths of a league had the following value:

Townsite of Ensenada, 640 acres at \$250 per acre.....	\$160,000.00
640 acres adjoining townsite at \$50 per acre.....	32,000.00
Remaining 1,974.55 acres at \$20 per acre.....	39,491.00

An award of \$231,491 is, therefore, made without interest.

Under an agreement dated January 28, 1943, Harry B. Lind, individually and as administrator of the estate of Maria Amparo Ruiz de Burton, assigned to John J. O'Connor an undivided one-tenth interest in this claim. This assignment was approved by an order of the Superior Court of California in and for the County of San Diego, dated March 19, 1943. John J. O'Connor has filed a written request that he be allotted one-tenth of the award herein. This request is granted and the Commission hereby awards to him the sum of \$23,149.10.

An application has been made by John J. McDonald, former attorney for claimant, pursuant to the aforesaid section 5(c); for determination and apportionment by the Commission of the attorneys' fees for services rendered by him and other attorneys associated with him in said services with respect to this claim. The application is supported by a written agreement for attorneys' fees dated August 1, 1935, and other documentary evidence, and is opposed by Harry B. Lind. The Commission finds upon the entire record that John J. McDonald and his associated attorneys are justly entitled to five per centum of the award herein and, accordingly, awards to him as and for attorneys' fees for himself and his associated attorneys five per centum of the award, or \$11,574.55.

An award of \$231,491, without interest, is accordingly made herein, to be distributed as follows:

To Harry B. Lind as administrator of the estate of	
María Amparo Ruiz de Burton, deceased.....	\$196,767.35
John J. O'Connor	23,149.10
John J. McDonald	11,574.55

DECISION No. 45-D

General Docket No. 2490 (part). Special Docket No. 1427 (part). Claimant: The Batopilas Mining Company. Amount claimed: \$1,106,406.07. Amount awarded: \$40,160.42.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. The claim was filed by memorandum notice with the General Claims Commission in the amount of \$750,000, and with the Special Claims Commission in the amount of \$1,165,273. It was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a general claim.

The following items of claim were presented to the General Claims Commission by memorial filed on December 6, 1935:

1. Value of property taken by federal and Maderista revolutionary forces between December 26, 1910 and May 10, 1911	\$1,967.19
2. Value of property taken by Orozco revolutionary forces between June 20 and September 30, 1912.....	7,128.83
3. Value of property taken by federal and Constitutionalist forces in 1913	2,963.11
4. Value of property taken by federal and Constitutionalist forces between September 1913 and September 1914.....	6,413.75
5. Value of silver taken by General Villa (Constitutionalist) in April 1913 and cost of recovering other silver likewise taken by General Villa	6,539.20
6. Losses sustained in connection with the redemption by claimant of "vales" which it was compelled by federal military authorities to issue to the public; double tax payments and value of goods lost in transit	5,465.82
7. Loss sustained in August, 1914 by reason of purchase by claimant, under compulsion, of fiat currency.....	3,383.08
8. Loss of merchandise on May 14, 1915, by reason of failure of authorities to extend protection.....	341.89
9. Value of property taken by Constitutionalist and Conventionist forces between August 2 and October, 1915.....	9,987.55
10. Double payment of mining taxes in 1915.....	503.00
11. Tax illegally collected by Carranza authorities in September, 1915	388.01
12. Taxes for the years 1915-1916 exacted from the claimant by the Mexican Government and which had previously been paid to Constitutionalist forces	1,507.59
	\$46,589.02

The American Commissioner designated pursuant to the General Claims Protocol of April 24, 1934, between the United States and Mexico considered that items 10, 11 and part of item 6 (\$314.53) constituted general claims and he made an appraisal with respect to those items in the total amount of \$1,205.54. He classified the remaining items of claim as special. No objection having been made by the claimant to the action of the American Commissioner, this Commission on November 12, 1943, entered

an award on the basis of that appraisal conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942.

The balance of the claim originally filed with the Special Claims Commission by memorandum notice, namely, \$1,118,683.98, was submitted to the General Claims Commission for determination of the sole question of jurisdiction, and was held by the American Commissioner to constitute a special claim.

In a memorial and written legal contentions submitted on behalf of the claimant to this Commission with reference to the latter-mentioned portion of the claim, the several items of loss are set out as follows:

A. Loss of profits 1911-1914: Difference between the annual net profit for the period 1901-1910 (\$171,276.43) and the average annual net profit during 1911-1914 (\$77,164.38), or \$94,112.05 a year	\$376,448.20
B. Loss of net profit, 1915: Difference between the annual, average net profit for the period 1901-1910 (\$171,276.43) and net profit for 1915 (\$40,403.46), or.....	130,872.97
C. Loss of profit 1916-1917: On same basis as above for two years	\$342,552.86
Plus net loss for 1916-1917	47,627.60
	390,180.46
D. Loss of net profit 1918: Difference between 1901-1910 average (\$171,276.43) and 1918 net profit (\$1,932.07).....	169,344.36
	1,066,845.99

At all times pertinent to the instant claim, the claimant, an American national, was the owner and operator of valuable mining properties located principally near the town of Batopilas, in the southwestern part of the State of Chihuahua, Mexico. It appears that in 1910, its investments in that connection, independent of the value of the mining properties, exceeded three million dollars. Substantial earnings were realized from the properties up to that time. Following the outbreak of the revolution in 1910, claimant's operations were considerably disrupted and interfered with as a result of the activities of Mexican revolutionary, federal and other forces.

The losses for which claim is made in items 1, 2, 3, 4, 5, 9 and 12 and part of item 6, namely, \$3,653.20 enumerated above, are satisfactorily established and are shown to have been occasioned by forces for whose acts the Mexican Government assumed liability under the provisions of Article III of the Special Claims Convention of September 10, 1923. An award is accordingly made with respect to those items in the total amount of \$40,160.42.

The portion of item 6 for which no allowance is made herein (\$1,498.09) relates to losses allegedly sustained by the claimant through being obliged to issue to the public silver certificates or orders to bearer (vales) for refined silver which certificates it is said were subsequently required to be redeemed at their face value which was in excess of the value of the paper currency then in circulation. It is difficult to determine the theory upon which claimant seeks recovery but the most favorable interpretation of the evidence would seem to point to the conclusion that claimant seeks to recover loss because of the refusal of the people in the

vicinity of Batopilas to accept the "vales" at the rate, measured in pesos, at which claimant states it was required to issue them. This lack of confidence on the part of the public in the "vales" in effect caused a fluctuation in the value thereof. It has been held by this Commission, in consonance with the general rule, that fluctuation of currency is not a valid basis of recovery. We see no reason for a deviation from that rule in the present instance. Accordingly no allowance may properly be made therefor.

Item 7 relates to losses allegedly sustained by the claimant through the enforced purchase of depreciated currency in 1914. There is not before the Commission evidence which would permit of any satisfactory determination with respect to the merits of this item. Moreover, as pointed out above, losses resulting from the enforced circulation of depreciated currency does not, as a general rule, constitute a basis of international liability.

The forces responsible for the losses comprehended by item 8 of the claim (\$341.89) are not identified for which reason liability cannot be said to exist under the terms of the Special Claims Convention of September 10, 1923. From all that appears, this loss was occasioned by the acts of ordinary thieves whose identity was never established. The evidence fails to establish liability on the part of the Mexican Government under the terms of the General Claims Convention of September 8, 1923, with reference to this loss.

As noted above, the items of loss for which claim was made in that portion of the claim presented to the General Claims Commission for determination of the sole question of jurisdiction relate entirely to loss of profits during the years 1911-1918. Liability on the part of Mexico with reference to such losses is sought to be predicated upon the proposition that the activity of revolutionary and other forces in the vicinity of claimant's property obliged the claimant to abandon its operations.

In commenting upon the causes of the disruption of claimant's operations following the year 1910, its general manager, Mr. Alexander R. Shepherd, stated in an affidavit of April 1, 1936, as follows:

"Summarizing the situation at Batopilas, as to the inability to operate its mining properties, after the beginning of the revolution in 1910 up to 1920, the following facts should be borne in mind:

"1. All supplies, (except those noted below under Item No. 2) had to be brought by the railroad to Creel station on the Kansas City, Mexico, and Orient Railroad, a distance of some 200 miles southwest of Chihuahua City. And, if the road from Chihuahua City to El Paso was interrupted, then the means of getting these supplies was entirely cut off. In addition, from Creel Station to Batopilas these supplies had to be carried on mule-back, a distance of 80 miles.

"As the various bands and brands of revolutionists relied mainly on mules and men for their transportation, off the railroads under their control, they practically commandeered and took all the available horses and mules, and the few freighters who still owned mules, scattered over a radius of

150 miles from Batopilas, were afraid to travel the trails into Batopilas and run the risk of losing their mules, and equipment. Mules, horses, burros and cattle were their main possessions, hence they kept them away from the main traveled roads.

"2. While corn, beans and cattle were supplied to a small extent, within a radius of 150 miles of Batopilas, three-fourths of the amount required for feeding the workmen employed by the Batopilas Mining Company came from a radius of 250 miles or over, and these supplies had to be arranged and contracted for approximately a year in advance of their delivery at the camp.

"The facts, as noted, are sufficient proof that continuous operations in the isolated locality were impossible and have been so demonstrated through actual experience."

In the same affidavit Mr. Shepherd referred to the domination of the railroad between Chihuahua City and El Paso by revolutionary forces soon after the revolution began in 1910.

In another affidavit of the Secretary of the claimant company (Mr. Edgar W. A. Jorgensen) dated March 2, 1935, appear the following statements:

"That there were many reasons why the company could not temporarily abandon the mines; that such a course would have reduced the mines to the same state of deterioration as existed a century before after the depredation caused incident to the revolt from Spanish dominion; that abandonment of the mines would have meant their total destruction at the hands of armed forces and local robbers;

"That another very important reason why the company wished to continue its operations, if possible, was that the mines were the principal source of support for the 5,000 inhabitants who populated the town of Batopilas and vicinity; that if these inhabitants had been deprived suddenly of this support they would have been helpless; that the locality is extremely inaccessible; that the mine is situated deep in the Sierra, at the bottom of a rocky canyon; that there is no soil available for planting or agriculture; that long mountain trails are the only access to wagon roads and railroads; that it would have been nearly impossible for the inhabitants of the town of Batopilas to move elsewhere;

"That further, the business of native silver mining is a skilled occupation which requires years of training; that it would have been difficult for the miners in Batopilas to obtain suitable work at other trades; that it would have been nearly impossible for the company to have assembled another personnel equally skilled;

"That Batopilas itself produces no food in large quantities; that supplies must be carried in from a great distance on pack-mules; that even the armed forces coming to the town were soon compelled to leave, because of lack of food, after a short sojourn; that the continual depredations of revolutionary forces so reduced the company's resources that it was forced to occupy the local miners on shares, giving them a

proportion of the silver ores which they extracted; that this is bad mining practice in that it induces miners to extract the best ore without properly working the mine;

"That because of the lack of food and the lack of ready money, both due to the acts of the revolutionists and of the government forces, the labor conditions were such that the company was in great danger of raids by the miners themselves; that this is another reason which led the company to continue its efforts to mine silver in the face of the difficulties encountered;"

It thus appears that the principal reasons why claimant's operations could not be continued after 1910 were lack of transportation facilities and lack of funds with which to pay its employees.

In referring to certain broad principles by which it was guided in determining liability under the Special Claims Convention of September 10, 1923, the Special Mexican Claims Commission, created under an Act of Congress of April 10, 1935, stated:

"The causal connection between acts of forces and the claimant's loss is one of the essential elements of an awardable claim. Such connection, the Commission holds, must be proximate in the legal sense." (Report of that Commission to the Secretary of State, 1938, pp. 19-20.)

In the same decision that Commission stated that:

"Claims based upon loss of prospective profits have been disallowed on the ground that such losses were too speculative in character and have not been proved with a sufficient degree of certainty to warrant an award." (*Ibid.* p. 20)

In the claim of Isaac K. Berry, et al., that Commission declined to award damages for loss of crops and other property caused by interference with transportation facilities by opposing revolutionary forces on the ground that such losses were not proximately due to the acts of forces under the terms of the Convention of September 10, 1923. (*Ibid.* p. 45)

In the opinion of the Commission, the same principles are equally applicable with reference to the losses here involved.

There appears to be little doubt that the losses sustained through the inability of the claimant to operate its properties must, on the basis of the evidence presented, be regarded as having been incident to generally disturbed conditions rather than to the acts of any specific forces directed against the claimant or its property.

For these reasons, the Commission considers that no award can be made with regard to the portion of the claim based upon loss of profits.

As noted above, an award in the amount of \$40,160.42, without interest, is made in favor of the claimant with reference to the other items of claim.

DECISION No. 45-D

(SUPPLEMENTAL)

General Docket No. 2490 (part). Special Docket No. 1427 (part).
Claimant: The Batopilas Mining Company. Amount claimed: \$12,277.91.
Amount awarded: \$12,277.91.

The portion of this claim which is the subject of the present

decision is before the Commission pursuant to section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942, and by virtue of a second petition for reconsideration.

It is shown by the evidence in the original memorial and annexes that \$12,277.91 of the losses described in Item C of Decision No. 45, Series D, was sustained by claimant as the direct result of a raid on claimant's offices, warehouses and commissary at Batopilas by a large band of Villistas on May 20, 1916.

A supplemental award is accordingly made to the claimant for the sum of \$12,277.91, without interest, which award is to cover the above item which was not included in the previous award.

DECISION No. 41-D

General Docket No. 2524 (part). Special Docket No. 1725 (part). Claimant: P. Alfredo Vasquez. Amount claimed: \$26,939.00. Award: disallowed.

The portion of this claim which is the subject of the present opinion is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It is part of a larger claim which was filed by memorandum notice with both the General and Special Claims Commissions in the amount of \$38,015.50, and which was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as a *general claim*.

The claim was memorialized in two parts for presentation to the General Claims Commission, the part here involved (\$28,205), being submitted to that Commission solely to determine the question of jurisdiction. The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that items of claim totalling \$26,939 fell within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923, and that the remaining item (\$1,266) constituted a general claim. He held that no award should be made with reference to the general item. The claimant having indicated no objection to the action of the American Commissioner, this Commission, on August 11, 1944, entered an award on the basis of that appraisal conformably with the provisions of section 4(b) of the Settlement of Mexican Claims Act of 1942. There accordingly remain for final disposition items of claim totalling \$26,939 which were classified by the American Commissioner as special.

These items of claim have reference to certain issues of paper currency which the claimant, an American citizen, states he was obliged to accept in payment of goods sold by him in Mexico in connection with the operation of a general mercantile business, and which were allegedly subsequently repudiated by the Mexican Government. The currency in question is described by the claimant as follows:

Bills of the Tesoreria de la Federacion of Saltillo, Coahuila State, <i>Pesos</i> 1914	30,000
Bills of the State of Chihuahua issued under a decree of February 10, 1914	23,878

53,878

Claimant states that

"As to the dates on which I received particular bills or sums taken in many transactions covering a considerable period of time, I do not believe that any merchant anywhere can state such facts even approximately under oath."

He adds that

"... it is not practicable to give the details of transactions in which I accepted this demonetized and repudiated currency, much of which I was compelled to accept under threat of punishment."

Only a small portion of the currency in question was submitted by the claimant to the former American Agency in connection with the claim. In relation to claimant's statement that the currency was repudiated, it appears from evidence before the Commission in other cases that provision was made for the redemption of at least some of the currency issued under the decree of February 10, 1914, to which reference is made. To what extent the claimant may have availed himself of such opportunity as was provided for the exchange or redemption of the currency in his possession is not clearly disclosed. He states in that connection that

"Conditions were such that I could not take the currency immediately to the several states from which the issues were made and when I did present them they were refused as worthless paper."

The claimant has furnished no evidence to establish the cost or value of the goods for which he received the above-mentioned paper currency. In these circumstances, it is impossible to determine the extent of any loss that he may have sustained as a result of the forced acceptance of the currency. This would be so even if it were shown that the bills in question were repudiated.

It follows from the foregoing that there has not been established liability on the part of the Mexican Government and the claim must be disallowed.

DECISION No. 58-C

General Docket No. 2579. Claimant: James T. Peacock. Amount claimed: \$53,500.00. Amount awarded: \$9,753.33.

This claim, in the amount of \$53,500.00, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been previously made by the American Commissioner designated under the General Claims Protocol of April 24, 1934, between the United States and Mexico, and a review of that appraisal having been granted by this Commission. This is one of a large number of claims commonly known as Texas Cattle Claims. The general principles involved in the determination of said Texas Cattle Claims were announced and applied by the Commission in its decision in the claim of Helen Ruby Hall, Executrix of the Estate of William S. Hall, Deceased (Decision No. 57, Series C). All the factors essential in establishing liability and loss in a so-called "cattle claim" which we discussed at length in said decision have been fully considered by us in connection with the instant claim.

The American nationality of all the present claimants and their

predecessors in interest is established by satisfactory proof with the exception of that pertaining to the heirs or successors of Mrs. Celia A. Peacock. She was the surviving wife of William T. Peacock, a son of the original claimant, who died in Texas, intestate, on October 27, 1923, leaving surviving in addition to his said widow, a son by a previous marriage, one James T. Peacock (Mills). At the date of his death said William T. Peacock was the owner of one-fifth of the entire claim. One-third of his interest passed to his widow under the laws of descent and distribution of the State of Texas. The said Celia A. Peacock died on May 7, 1932, at San Antonio, Texas. Her greatniece, Lela Jane Brewer, claims the interest which belonged to Celia A. Peacock, as devisee under a purported but unprobated will of said Celia A. Peacock. Since there is no proof that the purported will was probated within four years as required by the laws of Texas, said Lela Jane Brewer acquired no interest by virtue of said will and the 1/15 interest which Celia A. Peacock had at her death passed according to the Texas law of descent and distribution. There is nothing in the record to disclose who are the legal heirs of Celia A. Peacock under said laws. For want of such proof no award can be made to any one claiming under Celia A. Peacock and the total award herein will accordingly be reduced by one-fifteenth of the total losses sustained by the original claimant.

After examining the evidence in this case and considering all the relevant factors which are fully set forth in Decision No. 57, the Commission finds that the above-named claimant lost cattle and horses for the loss of which Mexico is liable, of a value of \$10,450.00. Deducting the 1/15 interest of Celia A. Peacock leaves the sum of \$9,753.33 as the amount of the awardable loss.

Mr. Harold N. Marsh, attorney in this case, has filed a request for the determination of attorneys fees in the amount of 10% of the award. The Commission finds that 10% of the amount of the award herein is a fair and reasonable fee for the services rendered by said attorney.

The Commission therefore awards a total sum of \$9,753.33, with interest as provided in Section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1879, as follows:

\$8,778.00 to the estate of James T. Peacock, the original claimant herein; *provided*, however, that no portion of said award shall be paid to the said Celia A. Peacock or to any one deriving any interest in said claim from or through her;

\$975.33 to Harold N. Marsh.

DECISION No. 28-C

General Docket No. 2743. Claimant: James G. Ducey, John F. Ducey, Mary A. Ducey, Margaret Ducey Murphy, and Emma G. Smith. Amount claimed: \$2,680,000.00. Amount awarded: \$114,276.59.

This claim, in the sum of \$2,680,000.00, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been made by the Commissioner designated by the United States under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been

granted by this Commission (Order No. 9 dated December 11, 1943).

The claim arises out of the action of the Governor of the State of Durango, who on January 12, 1923, issued a decree declaring null and void the title granted by the President of Mexico on June 26, 1899, in favor of Patrick A. Ducey, to a tract of timber land known as the Pino Gordo tract containing approximately 47,173 hectares situated in the southwestern part of that State near the town of Pueblo Nuevo.

The present claimants are successors in interest of Patrick A. Ducey, who died on July 11, 1903.

The above-mentioned decree of the Governor was issued pursuant to a petition filed by the residents of the town of Pueblo Nuevo on March 1, 1920, under the local agrarian law, asking that there be "restored" to them approximately 167,000 hectares of land, including the entire Pino Gordo tract of which they alleged they had been illegally deprived.

After declaring the title of Ducey to be null and void, the Governor, in his decree of January 12, 1923, directed that all of the lands involved in the petition be "restored" to the petitioners, and possession of the lands was given to the latter on April 16, 1923.

This action of the Governor was confirmed in a decree issued by the President of Mexico on May 15, 1931.

The purchase price of the Pino Gordo tract, as recited in the grant from President Diaz to Patrick A. Ducey of June 26, 1899, was \$1.00 per hectare.

A report of a timber cruise made of the Pino Gordo tract in 1908 contained an estimate that there was on said property at that time over 775 million board feet of pine timber, additional timber necessary to make more than 230,000 railroad ties, and substantial quantities of oak and other kinds of timber. While there were no transportation facilities available for exploiting the property at that time, the report of the timber cruiser indicated that a branch railroad line could be built to the property and that logging operations could be conducted on an economical basis.

Beyond the maintenance of a caretaker on the property and the payment of taxes, it does not appear that any steps looking to the exploitation of the property were taken on behalf of the claimants prior to the year 1930. In that year negotiations were undertaken on behalf of the claimants with representatives of the *Compañía Maderera de Durango, S. A.*, looking to the execution of a contract for the exploitation of the timber by the lumber company on a royalty basis. Although substantial agreement seems to have been reached with respect to provisions to be incorporated into the proposed contract with reference to royalties, amount of timber to be cut, etc., it appears that the contract was not consummated because of claimants' inability to guarantee title to the property in view of the pending agrarian proceedings which at that time had not yet reached the final stage of a Presidential decree.

The record indicates that shortly after the Presidential decree of May 15, 1931, a contract for the exploitation of the timber was entered into between the community of Pueblo Nuevo and the *Compañía Maderera de Durango, S. A.*, under which a consider-

able quantity of timber is said to have been cut from the property up to the year 1935, railroad facilities appearing to have been extended "to the neighborhood of the Pino Gordo tract" about the year 1933.

In the claim filed with the General Claims Commission in this case, damages in the amount of \$2,680,000, computed on the following basis, were asked:

Value of timber on the tract in 1923.....	\$2,500,000
Value of the land.....	100,000
Expenses, including purchase price of the property, taxes, salary of watchmen, etc.	80,000
	2,680,000

Evidence contained in the record bearing upon the value of the property, includes affidavits of Edward Hartmann, Lem Parker and John F. Ducey; a contract of sale of approximately a *one-third* interest in the property between Abbie Ducey and Emma G. L. Smith, wife of Hiram C. Smith, for a recited consideration of \$5,000 on February 12, 1917; affidavits of two of the claimants; a statement of investments (\$81,723.80) in the property by claimants from 1898 to 1931; and telegrams from Hiram C. Smith and James G. Ducey containing offers to purchase approximately a *two-thirds* interest in the property for \$400,000 and \$450,000, respectively, made in 1911 and 1912.

In the appraisal of the claim by the American Commissioner under the General Claims Protocol of April 24, 1934, it is stated that in evaluating the timber land as of April 16, 1923 (the date possession was given to the agrarians under the Governor's decree of January 12, 1923), it should be borne in mind that there was no railroad near the Pino Gordo tract at that time. The Commissioner stated that after considering other timber land cases, he concluded that this tract had a value of between \$1.50 and \$2.00 per hectare in 1923. Since on that basis the entire tract (47,173 hectares) would have a value of approximately the same amount as the alleged expenditures of the claimants in connection with the property (\$81,723.80), the Commissioner considered it "would be fair" to allow claimants the latter amount with interest from April 16, 1923.

Claimants' petition for review of the aforementioned appraisal is based entirely upon the question as to the propriety of the American Commissioner's finding, on the basis of the evidence presented, that the property was worth between \$1.50 and \$2.00 per hectare in 1923. In that connection claimants contend that the evidence warrants a finding that the property had a "vastly greater" value than that fixed by the American Commissioner.

In considering the sole question presented by the petition for review, it seems pertinent at the outset to note that the previous appraisal of this claim affords little specific indication as to the precise basis upon which a value of \$1.50 to \$2.00 per hectare for the property was arrived at. The other timber land cases referred to by the American Commissioner are not mentioned by name or docket number nor are any similarities between those cases and the present claim alluded to. What, if any, bearing those cases

may have upon the issue of value is accordingly not made clear. This Commission is of the view that such items as taxes, expenses of maintaining a caretaker, "general expenses," organization costs, etc., which were taken into account by the American Commissioner in his appraisal of this claim, have no proper bearing on the question of the value of land or of the timber growing thereon.

It is obvious that the indemnity to which the claimants are entitled must be based on the value of the property in 1923. Such value cannot be determined from the estimated value of the timber on the tract because it does not appear that there have been taken into account the expenses involved in the cutting and marketing of said timber and no satisfactory evidence has been furnished bearing upon the cost of these operations. The scale of royalties provided in the proposed contract between the claimants and the lumber company which was never consummated likewise affords no satisfactory basis for fixing the value of the property. Even had that contract been executed, there is not before the Commission evidence which would permit of a reasonable determination of the quantity of the various classes of timber to which the scale of royalties would apply.

In the light of the evidence furnished, the Commission concludes that at the time of expropriation this property had a value of 5 pesos per hectare or a total value of 235,865 pesos. This is equivalent to the average rate of exchange prevailing in April 1923 (\$0.4845), to \$114,276.59.

The record discloses that James G. Ducey, one of the persons named as claimant herein, died on or about February 4, 1935. Evidence recently presented to the Commission establishes that his widow, Adele Lucke Ducey, is the only person interested in his estate.

The record further discloses that the interest in the claim formerly owned by Margaret Ducey Murphy is now owned by Margot Murphy McConnell, and that Mary A. Ducey and Emma G. Smith, original claimants herein, are now deceased.

A request has been made of the Commission pursuant to the provisions of section 5(c) of the Settlement of Mexican Claims Act of 1942, to fix the fee of the firm of Basham, Ringe and Correa of Mexico City for services rendered the claimants (with the exception of Emma G. Smith), in connection with the present claim. It is asserted in that connection that the firm had an agreement with four of the claimants providing for certain cash payments in addition to a contingent fee of five per cent for services to be performed by the firm in endeavoring to obtain the return of the property or the recovery of its value after its expropriation in 1931. Certain documentary evidence is presented for the purpose of establishing the existence of such an agreement.

The petition of the firm to have the Commission fix its fee is opposed by the firm of Coudert Brothers of New York, which held a power of attorney from all the claimants to represent them in connection with the prosecution of the instant claim, on the ground, among others, that such agreement as existed between the claimants and the firm of Basham, Ringe and Correa, had

reference solely to services to be performed by that firm in Mexico looking to the return of the property.

In the opinion of the Commission, the evidence which has been adduced establishes in a satisfactory manner that an agreement existed between four of the claimants and the firm of Basham, Ringe and Correa, for the payment to the latter of five per cent of the amount recovered with reference to this property without regard to the place of such recovery. It is conceded by Coudert Brothers that services in connection with the claim were in fact rendered by the firm of Basham, Ringe and Correa, as is amply shown by the record. It is not contended that the fee agreement had reference to the interest in the property (one-third) owned by Emma G. Smith.

On the basis of the entire record the Commission determines the just and reasonable attorneys' fee of the firm of Basham, Ringe and Correa in this case to be five per cent of \$76,184.39 (two-thirds of the total amount of the award of \$114,276.59) or \$3,809.22, such fee being chargeable in equal proportions against the amounts awarded each of the claimants except the estate of Emma G. Smith.

Subject to the foregoing, an award is made in favor of the respective claimants in the amounts indicated below with interest, as provided by section 7 of the Settlement of Mexican Claims Act of 1942, from April 16, 1923:

Adele Lucke Ducey	\$19,046.10
John F. Ducey	19,046.10
Estate of Mary A. Ducey	19,046.10
Margot Murphy McConnell	19,046.10
Estate of Emma G. Smith	38,092.19

114,276.59

DECISION No. 38-D

General Docket No. 2771 (part). Special Docket No. 2709 (part).
Claimant: Chihuahua Lumber Company, and General Docket No. 1699.
Special Docket Nos. 2182 and 2580. Amount claimed: \$819,047.15.
Award: \$48,845.99.

Claimant, the Chihuahua Lumber Company, an American national, was at all times pertinent to the present claims, the owner of all the stock of the Chihuahua Lumber and Manufacturing Company, also an American national. The memorandum notice of claim filed on behalf of the parent company with both the General and Special Claims Commissions in the amount of \$1,400,000, includes the items of loss totalling \$328,000 which are set forth in the memorandum notice of claim filed with both Commissions on behalf of the subsidiary company, hence a determination of the larger claim will dispose of the claims of both companies.

Both claims were classified in their entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934, as being of a *general* nature. Items of claim totalling \$819,047.15 which were presented by memorial to the General Claims Commission were considered by the American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 to fall within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923. The balance of the claim in

the amount of \$580,952.85, which was presented to the General Claims Commission for the sole purpose of determining the question of jurisdiction was classified as *general* and was disallowed.

There accordingly remain for final disposition under the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942 the following items of claim classified by the American Commissioner as special:

	United States currency
(1) Value of lumber and materials sawed and shipped by government officials from the San Juanito mill.....	\$48,845.99
(2) Damages to and destruction of timber on company's land, damage to buildings, mills, machinery and farming implements and loss of livestock, crops and other personal property	300,000.00
(3) Loss and damage due to depreciation of land and holdings by reason of the destruction of buildings, crops, timber, fences and general deterioration	250,000.00
(4) Loss of earnings for the years 1912 to 1919, inclusive.....	220,201.16
	819,047.15

On or about September 1, 1902, the Chihuahua Lumber and Manufacturing Company acquired by purchase a tract of timber land containing 4,950 hectares situated in the Municipality of Bocoyna, District of Benito Juarez, State of Chihuahua, Mexico. Some months later the company obtained a ten-year lease on an adjoining timber tract consisting of about 10,000 acres. In 1903, all the stock and assets of that company were acquired by the Chihuahua Lumber Company (a Missouri corporation, not the claimant herein). Thereafter the Missouri company acquired certain real estate in the City of Chihuahua on which it erected a sash and door factory and planing mill for the manufacture of lumber products. A saw mill was also erected at La Loya, Chihuahua. By 1907 it is said that investments in improvements had increased the assets of the manufacturing company to over 221,000 pesos, exclusive of the timber lands, and that its annual business at that time aggregated in excess of 334,000 pesos.

In 1906 the entire capital stock of the Missouri company was acquired by the Chihuahua Lumber Company (a Wyoming corporation, claimant herein). The latter-mentioned company made additional investments to the extent of about \$200,000 in the lumber business of the manufacturing company. It is claimed that the average annual net profits of said company from 1907 to 1911 amounted to approximately \$31,483.

While the evidence tends to establish that the business was disrupted to some extent from the beginning of the revolutionary disturbances in 1910, serious interference with the company's operations apparently did not occur until about 1912. In that year it is alleged that conditions became so disturbed that it was impossible to operate some of the company's mills and to retain its employees. It is further alleged that several carloads of lumber were confiscated by revolutionary forces and that robberies and other depredations reached such an extent that in 1913 it became necessary to completely close the mills in Chihuahua City. Military authorities are said to have given permission for the cutting of timber from the company's property. This is alleged to have

occasioned the loss of a million board feet of lumber. It appears that the liquidation of the Chihuahua Lumber and Manufacturing Company began in 1918 and that said company finally disposed of the above-mentioned property in 1925.

That the losses for which claim is made were due to conditions arising from revolutionary disturbances appears to be clear. Not all of such losses, however, can properly be attributed to the acts of forces to which reference is made in Article III of the Special Claims Convention of September 10, 1923. While the item of claim (Item I) in the amount of \$48,845.99 for the value of several carloads of lumber shipped from claimant's mills at San Juanito by military authorities in 1914 is proven by documentary evidence, the remaining items of losses for which claim is made are found to be not adequately established. Moreover, losses of the nature alleged are attributable to generally disturbed conditions rather than to acts of specific forces as contemplated by Article III of the Convention of September 10, 1923. Under the circumstances, the award to claimant must be limited to compensation for the aforesaid Item I.

Accordingly, an award is made in favor of the Chihuahua Lumber Company in the amount of \$48,845.99, without interest.

DECISION No. 40-C

General Docket No. 3084. Claimants: Alfred L. Shapleigh, John A. Peck, Rebecca Peck Dusenbery, Belle Peck Bryant, Max M. Bryant, Elizabeth P. Peck, Margaret C. Lytle. Amount claimed: \$363,769.80. Amount awarded: \$48,660.23.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 21, dated February 5, 1944).

The claim arises out of the expropriation by authorities of the Mexican Government on March 5, 1925, of 39,469.80 hectares of land, bordering on the Rio Grande River in the District of Bravos, State of Chihuahua, Mexico. This property was purchased on or about February 13, 1897, by Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, their respective interests therein being represented by the following proportions:

Thomas Ranken, Jr.	32/81
Charles H. Peck	25/81
Alfred L. Shapleigh	24/81

Claimants John A. Peck, Rebecca Peck Dusenbery, Belle Peck Bryant, Max M. Bryant and Elizabeth P. Peck were designated as trustees under the will of Charles H. Peck, deceased. Margaret C. Lytle is one of the successors in interest of Thomas Ranken, Jr.

The claim presented to the General Claims Commission was formulated on the following bases:

	Pesos
4,700.00 hectares of land at 140 pesos per hectare.....	658,000.00
34,769.80 hectares of land at 2 pesos per hectare.....	69,539.60
39,469.80	727,539.60

This sum was said to be equivalent to \$363,769.80, United States currency, in which amount claim was made.

The same evidence as was presented in the claim of Shapleigh, *et al.*, on review before this Commission in Docket No. 1915 to establish the American citizenship and interest of these claimants is relied upon in the instant case. The American Commissioner who appraised said claim (Docket No. 1915) as well as the present one, considered that the citizenship of the successors in interest to Charles H. Peck had not been satisfactorily established and that the interest of Margaret C. Lytle was proven only to the extent of a 1/30 part in the estate of Thomas Ranken, Jr.

The petition for review filed in Docket No. 1915 was addressed also to the appraisal made by Commissioner Underwood in the instant claim. The additional evidence filed by the claimants in said Docket No. 1915 respecting the American citizenship of the Peck heirs is likewise applicable in the present claim. In our opinion, such evidence removes any doubt as to the American citizenship of such heirs. Here, as in Docket No. 1915, the interest of Margaret C. Lytle in the estate of Thomas Ranken, Jr., is proven only to the extent of 11/120 thereof.

The evidence relating to the value of the land involved in the instant case is similar to that furnished in Docket No. 1915 and consists primarily of the appraisal of the land made by one M. L. Cardona, a Mexican engineer, in 1928. In our view, such evidence does not support the values claimed. In view of the similarity of the land involved in both claims, the value at which we are assessing uncleared, tillable land in the other claim, namely, 25 pesos per hectare, represents fair and reasonable compensation in this case. Since the pasture land involved in the present claim is described in the evidence as "of poor quality," a value of one peso per hectare is considered adequate therefor.

Application of these values to the 39,469.80 hectares here involved results as follows:

4,700.00 hectares of uncleared, tillable land at 25 pesos per hectare	Pesos 117,500.00
34,769.80 hectares of pasture land at 1 peso per hectare	34,769.80

152,269.80

This amount is equivalent at the rate of exchange applicable at the time of expropriation (\$0.4974) to \$75,739.00, United States currency.

An award is accordingly made in this case, with reference to the interests of the respective claimants, in the amount of \$48,-560.23 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from March 5, 1925, as follows:

To Alfred L. Shapleigh 24/81 of \$75,739.00 or.....	\$22,441.19
To Margaret C. Lytle 11/120 of \$75,739.00 or.....	2,742.81
To John A. Peck, Rebecca Peck Dusenbery, Belle Peck Bryant, Max M. Bryant, Elizabeth P. Peck, or their successors, as trustees under the will of Charles H. Peck, 25/81 of \$75,739.00 or.....	23,376.23

48,560.23

DECISION No. 33-C

DECISION No. 9-D

General Docket No. 3116 (part). Special Docket No. 595 (part). Claim-

ant: Mexico Diversified Land Company. Amount claimed: \$245,673.98. Amount awarded: \$57,888.28.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 46 dated August 5, 1944). The special part of the claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the aforesaid Act.

Claimant contends that losses in the sum of \$245,673.98 were sustained by it by reason of (1) the continuous occupation of the claimant's property in the District of Huimanguillo, Tabasco, Mexico, by revolutionary forces from December 30, 1910 to May, 1922, to the exclusion of claimant, (2) the taking away from claimant in 1910 of certain household goods and supplies under the orders of one Colonel Ignacio Gutierrez, a member of the Madero faction which subsequently became the legitimate government of Mexico, and (3) the destruction and taking away of property by other Mexican armed forces.

The entire claim was filed by memoranda on October 2, 1925 and October 14, 1925, respectively, with both the General Claims Commission established under the Convention of September 8, 1923, and the Special Claims Commission created pursuant to the Convention of September 10, 1923, between the United States and Mexico.

The Joint Committee created pursuant to Article V of the Special Claims Convention of April 24, 1934, concluded that the entire claim was within the jurisdiction of the General Claims Commission.

On February 4, 1936, there was filed with the General Claims Commission a memorial covering certain items of said claim in the sum of only \$32,888.28, the claimant reserving the right to file a separate memorial covering the remaining items embodied in the memoranda. The balance of the claim in the sum of \$212,785.70 was thereafter filed by a separate memorial before the said Commission, solely to procure a determination upon the question of jurisdiction.

Commissioner Underwood found that items totaling \$114,409.12, which when correctly computed amount to \$114,410.12, were of a general nature and that no award should be made thereupon. The other items totaling \$131,264.86 were found to be special and without his jurisdiction.

On petition for review of the appraisal made by Commissioner Underwood of the general claim it is urged by petitioner: (1) that since the appraisal of "no award" made no findings of fact or law, but merely concerned itself with jurisdictional aspects of the claim, said appraisal was not an affirmative determination as to the merits thereof, but merely a holding that no award should be made on the general side of the claim until the Special Claims Commission passed on the question of basic liability since the general claim "rested upon the same basic" liability as the special

one; (2) that the brief of the United States in support of the first memorial indicates liability in connection with acts committed against claimant's property; and (3) that the losses with respect to the recovery of taxes paid to the Mexican Government, the interference with the Swain and Stearns contracts, and the damages for the loss of the use and occupation of claimant's property, are all recoverable.

As hereinabove stated, the entire claim is now one for the determination of this Commission, we having granted a review of Commissioner Underwood's appraisal of the general part of this claim amounting to \$114,409.12 and the balance thereof in the amount of \$131,264.86 being properly before us under the provisions of section 3 (a) (5) of the aforesaid Act. The entire claim is itemized as follows:

1. Loss of use of property from 1910 to 1922.....	\$94,377.86
(\$78,383.41 is for the period up to May 31, 1920, the date fixed by the Convention of September 10, 1923, as the limit of the Special Claims Commission's jurisdiction, and \$15,993.95 is for the general part of the claim for damages for the period after May 31, 1920.)	
2. Losses to property caused by forces defined in paragraph 2 of Article III of the Convention of September 10, 1923.....	32,888.28
3. Loss by reason of interference with the so-called E. C. Stearns option agreement	90,499.50
4. Loss of oil rental from July 1, 1918 to July 1, 1922 by reason of interference with the so-called Swain lease.....	20,000.00
(\$12,083.33 is the special claim for damages up to May 31, 1920, and \$7,916.67 is the general part of the claim for the period from May 31, 1920 to July 1, 1922.)	
5. Taxes paid to the State of Tabasco during the time the property was occupied by rebel forces.....	7,908.84
	245,673.98

The aforesaid items of claim are hereinafter considered seriatim:

1. The claim for \$94,377.36 for the loss of use of the property for the period from December 30, 1910 to May, 1922 is based on an alleged investment in the land and improvements of \$142,996.69 and represents interest for said period at the rate of six per cent per annum on said sum. The various items of alleged investment are as follows, and it will be noted that the total thereof exceeds the said figure of \$142,996.69.

	To Dec. 31, 1920	To June 17, 1925
Purchase contract	\$94,298.27	\$94,298.27
Purchase contract expense	2,934.14	2,934.14
Development costs to December 31, 1910	30,321.56	30,321.56
Development costs subsequent to December 31, 1910	12,944.90	12,944.90
Mexico City Office	1,294.39	1,294.39
Taxes paid	6,306.35	12,077.24
Taxes Expense	2,675.13	3,684.67
Boats	17,205.25	17,205.25
Boat Expense	995.87	995.87
Total	168,975.86	175,756.29

Claimant concedes that the foregoing total is subject to the following deductions:

	<i>Receipts</i>	
Land sales		\$8,267.44
Oil leases		10,000.00
		18,267.44

We hold that only those items with respect to the payments made on the purchase contract (the deed recites a payment of \$87,886.50 and not \$94,298.27 as claimed above) and expense incurred for boats in the amount of \$5,199.94, totaling \$93,086.44 properly represent investment costs. Although the item of "boats" in the above itemization is claimed to be \$17,205.25, the record shows an expenditure of only \$6,487.44 for boats. These were sold for \$1,287.50 thus establishing claimant's loss thereon to be \$5,199.94 (Mem., 136, 156, 178, 248). The remaining constituent parts of this item are deemed to be not recoverable inasmuch as they represent ordinary business expenses necessarily incurred in the operation of a going concern. Deducting the aforesaid receipts of \$18,267.44 leaves a capital investment of \$74,819. Upon this amount, however, the evidence does not warrant an award of interest on the basis, as contended, that claimant was deprived of possession of its land for the period of eleven years and five months since the proof adduced falls far short of establishing claimant's exclusion from its land for so long a period of time. It is clear that the claimant was in occupation of parts of the property for various periods subsequent to 1910. Considering all the evidence the Commission finds that an award of \$25,000 would fairly constitute just and equitable compensation to claimant for its loss through the interference with the use and occupation of its lands during the aforesaid period.

2. The claim for \$32,888.28 is meritorious. It has been satisfactorily established that the buildings on claimant's property were destroyed by reason of the activities of revolutionary forces in the State of Tabasco under the command of Colonel Gutierrez, a member of the Madero faction; that household goods and supplies belonging to claimant were seized pursuant to his order and that other items forming the subject matter of this claim became total losses to claimant by reason of the aforesaid revolutionary disturbances. Liability of the Mexican Government is found to exist under paragraph 2 of Article III of the Convention of September 10, 1923.

3. The item of \$90,499.50 representing losses said to have been suffered through the alleged interference with the so-called Stearns option agreement, must be rejected. It is alleged that "In 1922, the Company entered into an oil development contract with E. C. Stearns, of Pittsburgh, Pennsylvania, who agreed to organize a party of geologists for the actual examination of the property. This party attempted to make this examination and was prevented from so doing by the presence of rebel and federal forces actually then on the land . . ." (Docket No. 3116, Mem., p. 137). No copy of the contract is offered in evidence. It is not possible for the Commission to determine with any degree of accuracy the extent of the obligations assumed by the parties thereunder. In any event the evidence is too vague, speculative and remote to warrant any award on the basis thereof.

4. As to the general or special part of the claim for damages alleged to have been suffered as a result of the loss of rental under a proposed lease contract between the claimant and Swain, the basis of this item is also alleged to be an interference caused by reason of occupation of claimant's property by Mexican forces. It is asserted that this agreement was entered into on August 9, 1915, that \$2,500 was payable semi-annually and that although payments of \$10,000 had been made in 1916 and 1917, no further payments were made from July 1, 1918 to July 1, 1922 "which rental for the time in question amounted to \$20,000.00." (*Ibid.* 210) The implication from this statement would be that the lease was to run until July 1, 1922. It is contended that this lease "was allowed to lapse in the year 1918" (*Ibid.* 179). The lessee, Swain, states that "the fact that the said lands were in the possession of rebel forces, was the sole and only reason of failure of said lessee and his associates to complete the exploration and development of the said lands in accordance with the terms and conditions of said lease." (*Ibid.* 136) However, according to a letter of May 5, 1916 from W. M. Shufeldt to M. E. Hay (*Ibid.* 281, Annex 30), it would appear that the purported lease was to expire long before 1922. It is stated therein:

"As the present lease is *about to expire* Swain is asking for a new lease . . . We discussed the extension of the present lease but decided that a new one would be better . . .

" . . . In the new lease we should have the say as to when conditions are right . . . I have intimated to him that there are some people in New Orleans wanting a lease for the same purpose so govern yourself accordingly." (*Italics supplied*)

There is therefore no convincing evidence to justify an award for loss of rentals from 1918 to 1922. Certain other statements in the letter just mentioned indicate that Shufeldt had some doubt as to whether Swain intended to conclude a new lease. Nor is there any evidence to prove the causal connection between the loss of rentals under the purported lease and revolutionary acts. This item of \$20,000 must therefore be disallowed.

5. The Commission holds that the Mexican Government is under no obligation to refund taxes paid by claimant upon the real property involved in the claim. Since compensation is made for loss of use and occupation, it is obvious that taxes were required to be paid for the period in question. Petitioner may not be reimbursed for the loss of the value of the use and occupation of the property and still claim exemption from the duty to pay taxes thereupon for the period during which it was deprived of such use and occupancy.

An award is accordingly made to claimant in the total sum of \$57,888.28 without interest.

DECISION No. 25-D

General Docket No. 3149. Special Docket No. 2210. Claimants: I. A. Porter, C. W. Enders, and Sam Graham. Amount claimed: \$4,875.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General

and Special Claims Commissions, and was classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. The claim was presented by memorial to the General Claims Commission for the sole purpose of determining the question of jurisdiction.

The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934 considered that the claim fell within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923. Claimants have indicated no disagreement with that determination and have filed no additional evidence under section 3(c) of the Settlement of Mexican Claims Act of 1942.

The claim, in the amount of \$4,875, is for the value of horses, cattle, saddles and other items of personal property alleged to have been taken by various bands of revolutionists from the Huitron ranch located near the town of Sacramento in the State of Coahuila, during the years 1912 and 1913. It is said that the ranch was operated jointly by the claimants at the time the losses occurred.

Beyond the uncorroborated statements of the claimants the record contains no evidence to substantiate the losses for which claim is made.

Accordingly, the claim is disallowed.

DECISION No. 28-D

General Docket Nos. 3257, 3258, and 3153. Special Docket No. 1145. Claimant: National Paper and Type Company. Amount claimed: \$6,155.14. Amount awarded: \$700.00.

These three claims are before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. They were all filed by memoranda notices with both the General and Special Claims Commissions, and were classified by the Joint Committee created under the Special Claims Convention of April 24, 1934 as general claims. Each of the claims was presented by memorial to the General Claims Commission, those included in General Docket Nos. 3257 and 3258 being submitted for determination on the sole question of jurisdiction. The American Commissioner designated pursuant to the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that all three of the claims fall within the jurisdiction of the Special Claims Commission established under the Convention of September 10, 1923.

The claimant expressed no objection to the action of the American Commissioner and has filed no additional evidence in support of the claims under the provisions of section 3(c) of the Settlement of Mexican Claims Act of 1942.

At all times pertinent to these claims the claimant, an American national, was engaged in the selling and leasing of printing machinery and equipment in the Republic of Mexico and maintained in that connection various branch offices in that country.

On or about November 1, 1912 the claimant leased to Messrs. Camargo Breton y Albear of Tampico a printing press and accessories valued at 3,991.97 pesos. In May 1915 Carrancista author-

ities entered the premises of the lessees, seized the printing press and accessories and thereafter failed to make any compensation therefor. Claim is made for the alleged value of this property less depreciation, in the amount of \$1,340.99 (Docket No. 3153). Liability with reference to this loss exists under paragraph 2 of Article III of the Special Claims Convention of September 10, 1923.

The evidence in the record bearing on the value of the above-mentioned equipment seized in 1914 is meager and does not fully support the claim of value of \$1,340.99 for such equipment asserted by claimant. On the basis of such evidence the Commission concludes that an award of \$700 will afford reasonable compensation to claimant for the loss suffered.

The claims included in General Docket Nos. 3257 and 3258 in the amounts of \$487.19 and \$4,326.96, respectively, are said to represent the value of printing machinery and supplies sold by the claimant during the years 1911, 1913 and 1914 to customers in Querétaro and Mexico City and for which no payment was made. It is alleged that this property was subsequently confiscated or destroyed by authorities of the Mexican Government or by revolutionary factions. The record does not indicate that the claimant retained title to any of this property or that the relationship between itself and the purchasers of the property was other than that of debtor-creditor. These losses are therefore of an indirect nature and do not constitute a proper basis of liability under either the General or Special Claims Conventions. These two claims are accordingly disallowed.

As indicated above, an award is made in favor of the claimant with respect to the claim in Docket No. 3153 in the amount of \$700, without interest.

DECISION No. 14-C

General Docket No. 3206. Claimant: Albert Levy, Francisco Vaello Pueg and Liberio Cadena, individually and as partners, doing business under the firm name of the Border Wholesale Commission Company. Amount claimed: \$38,696.83. Awarded: \$38,696.83.

This claim, in the sum of \$38,696.83, is for losses resulting from the seizure and disposition by Mexican authorities of 600 barrels of whiskey which had entered the customs house at Nuevo Laredo, Mexico.

Although request was made in the Memorial for damages in the sum of \$200,000 with interest, in the petition for review a minimum of \$38,696.83, comprising amounts claimants paid for the whiskey and duties, plus interest is sought.

The claimants were partners under the firm name of Border Wholesale Commission Company. On January 10, 1920, they purchased in the United States 600 barrels of whiskey for purposes of exporting same to Mexico, for the billed price of \$62,869.85, including transportation charges. In accordance with a verbal agreement executed in December 1919 by claimants and certain Mexicans, the former paid one-third of the price of 500 barrels, or \$20,833.33. Claimants were also required to pay one-half of the purchase price, and the other parties the balance, on the remaining 100 barrels.

The whiskey was sent by railroad to Mexico on January 16, 1920 and arrived at Nuevo Laredo. Sada Paz Hnos., a banking firm in Nuevo Laredo acted as fiscal agents for claimants in connection with payment by the latter of their share of duties on the shipment. Upon being advised by said firm that a deposit of \$16,000 should be made by claimants in the Laredo National Bank for purposes of paying duties, claimants made the requested payment. Claimants paid also a sum of \$1,863.50 for their one-half interest in the 100 barrels. While the petition for review refers to this item as a payment for duties, it appears from the record (Annex 16) that at least part of this amount was not disbursed for that purpose. However, the Commission is of the opinion that this payment did represent the amount due by claimants for their one-half interest in the 100 barrels.

Mauro Uribe, the Mexican collector of customs at Nuevo Laredo, conspired with customs house employes and others to defraud the Mexican Government of the duties. As a result of this fraud import duties and revenue charges on the whiskey were paid to the Mexican Government by Uribe and the other officials only to the extent of 30,985.50 pesos, which was only a portion of the total amount paid. Upon discovering the fraud the Mexican Government treated the whiskey as contraband. The claimants endeavored by *amparo* proceedings to prevent the sale of the whiskey by auction by reason of the alleged nonpayment of duties but the whiskey was sold in that manner. At the time that the Mexican authorities seized the whiskey, Uribe and other employes of his office absconded to the United States. Some were arrested and placed in jail on charges of fraud.

On petition for review it is contended (1) that claimants' title to one-third of the whiskey has been sufficiently established by evidence offered with respect to the verbal agreement had between the parties; (2) that it has been shown that claimants paid their portion of Mexican duties, and (3) that it is clear that claimants did not participate in the plan to defraud the Mexican Government of duties.

Petition for review was granted. Order No. 30.

Petitioners' first contention has merit. The bulk of the testimony in this connection indicates that the parties were acting pursuant to the terms of a verbal agreement. The record contains also evidence of a memorandum of such agreement. By the terms of said agreement claimants took title to one-third of the whiskey. The Mexican Brief admits that the Border Wholesale Commission Company "was the owner of a third part of the first 500 barrels. . . ."

With respect to petitioners' second contention it is believed that the greater weight of the evidence indicates that the amount of duties, or \$16,000, was paid by claimants to their fiscal agents on their portion of the shipment. One Santos, an acquaintance of claimants, swears that "he knows that the Border Wholesale Commission Co. did deposit funds in the Nilmo National Bank, Laredo, Texas, for the purpose of paying the duties on this shipment, and that these funds were for account and credit Sada Paz Hnos., Bankers at Nuevo Laredo, Mexico and that these funds were

withdrawn in due time by Fernando Calleja, manager Sada Paz Hnos., Nuevo Laredo, Mexico, who had conspired with Mauro Uribe, Jose Gomez and Company, the Mexican Forwarding Agents, for this shipment of whiskey, and other employes of the Mexican Custom House to defraud the Border Wholesale Commission Co. of the better part of the duties. . . .” Uribe then absconded with a good portion of the duties which Sada Paz Hnos. paid over to him as claimants’ share of the duties owing.

The Mexican Government concedes that by prior arrangement with Uribe false statements were made by him concerning the amount and contents of the barrels for purposes of avoiding full payment of duties.

There is no evidence in the record to show that claimants knew of, or were parties to, in any fashion, the conspiracy to defraud the Mexican Government. The fraud was made possible through activity of government officials charged with the collection of duties and the Commission is of the opinion that claimants should receive compensation for their base investment, namely, \$20,-833.33, the amount paid by them for their one-third interest in the whiskey. The Commission is also of the opinion that the amount of \$16,000 was actually paid by claimants to and received by the Mexican customs authorities and that it is therefore recoverable. Compensation should also be made for the above-mentioned item of \$1,863.50.

An award is accordingly made in favor of the claimants in the amount of \$38,696.83 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from February 1, 1920.

DECISION No. 30-D

General Docket No. 3209. Special Docket No. 1465. Claimant: Mrs. S. Perez Vizcaino. Amount claimed: \$95,354.00. Award: disallowed.

This claim before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942. It was filed by memorandum notice with both the General and Special Claims Commissions, in the amount of \$95,354 and was classified in its entirety by the Joint Committee created under the Special Claims Convention of April 24, 1934 as a general claim. The claim was presented by memorial to the General Claims Commission for the sole purpose of determining the question of jurisdiction.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, considered that the claim fell within the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923. The claimant expressed no objection to the action of the American Commissioner and has filed no additional evidence in support of the claim as provided by section 3 (c) of the Settlement of Mexican Claims Act of 1942.

The following basis of claim was set forth in the memorandum notice of claim:

“That her [claimant’s] husband was in possession of paper money in the value of 190,708 Mexican pesos, which he received during the years 1915 and 1916. Claimant’s husband died on or about the first of November, 1916, and said claim-

ant has been unable to have this paper money redeemed, the Mexican governmental authorities having repudiated same."

No evidence in support of the claim beyond meager, unsworn statements of the claimant appears in the record. In a communication from the claimant to the Department of State dated July 25, 1925, it is said that the money in question had been issued by various governments during the revolution, and that claimant had been compelled to accept it. In a further communication from the claimant dated August 27, 1925, she stated the money had been issued by Villa and later recognized by Carranza and that it had been received by claimant's husband in payment of unimproved property near Mexico City. The actual value of the property is not shown. The currency in question has not been submitted as part of the record. The statement made in the memorandum notice of claim to the effect that it was repudiated by the Mexican Government is not supported by any testimony. Neither is it alleged that the bills were ever presented for redemption or exchange. Except for her own statement as to her birth in New Orleans, no evidence is furnished to establish claimant's American citizenship.

While it appears from the foregoing that the claim is properly classified as a special claim, in the absence of evidence to establish claimant's American citizenship, and the facts upon which liability is intended to be predicated, a valid basis of claim is not established.

The Commission accordingly concludes that the claim must be disallowed.

DECISION No. 32-C

General Docket No. 3237. Claimants: W. D. Davis (William D. Davis, Jr.), Sallie S. Dignowity, James R. Davis, Mrs. Maurice Dewey. Amount claimed: \$1,025,000.00. Amount awarded: \$22,857.14.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942. It had previously been appraised by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934 as being entitled to no award. Thereafter the claimant filed a petition for review by this Commission pursuant to subsection (c) of section 4 of the aforesaid Act and the Commission having considered the petition denied the same in its Decision No. 24 (Series B) dated June 21, 1944. Upon a motion for reconsideration of the said decision the Commission by its Order No. 54, dated January 11, 1945, vacated said Decision No. 24 and ordered a review of this claim pursuant to subsection (d) of section 4 of the aforementioned Act.

Originally this claim was for the loss of four mines known as the "Azul," "La Chata," "Canastrania" and the "Sally Davis" (sometimes called the "Sally D."), all located in the San Lorenzo District, State of Durango, Mexico, and near the town of Cuencame, as well as for the death of three individuals, namely, William Barry, John Feltner, and Robert M. (Rocksey or Roxie) Mathews. The memorandum of claim asked damages of \$3,000,000 for the loss of property and \$50,000 each for the death of the three men.

One memorial was filed for the loss of the property, and another for the death of William Barry. Mexico filed answers and briefs. Reply briefs and counter briefs have been filed, the same exhibits being used for each portion of the claim. A subsequent motion, alleging that the docket number 1849 had been given through error and asking that the claim be docketed under No. 3237, and that the amount of the claim for the loss of the property be set at \$1,000,000, was filed by the United States Agency. The claims for the death of the other two individuals were never memorialized.

It is alleged that William Davis, Sr., William Barry, Michael T. Davis, John C. Davis, Edward Davis, William Davis, Jr., and John Feltner entered into a partnership and acquired certain mining property (the mines listed above) and started to work the mines; that the partners furnished approximately \$100,000 to develop the mines of which some \$40,000 was spent on a smelter and other improvements and that \$10,000 was spent in building and stocking a commissary; that ore was taken out by pack train and that such operation was profitable, but that the smelter was built to make the operation more profitable. It is further alleged that in January 1885 William Barry, one of the partners, and one Mathews, who is variously described as an employee, as a neighboring mine owner, and as a "side-pardner" [*sic*], were murdered and robbed. Claimants contend that the Mexican authorities made no efforts to apprehend the murderers. They allege that two of the partners made a personal request of one Anador Cardenas to punish the criminals, and a request for their own protection and protection of the mining property but that these requests were denied. They also allege that a request similar in nature was made to a United States Vice-Consul named Cook, who, it is claimed, was derelict in his duty. It was claimed that Cardenas was Jefe Politico, who was in charge or assumed to be in charge (Annex 2, p. 12), and was suspected of instigating the murders. The smelter had been completed about this time and some six months later another partner, John Feltner, was murdered and his body found in a shallow grave. It was alleged that soon thereafter the smelter, reservoir and mines were destroyed and the commissary robbed and destroyed, presumably by bandits, although it is plain that the claimants suspected that Cardenas was also responsible therefor. The American Embassy, acting from knowledge of the first murders obtained from a newspaper, protested to the Mexican foreign office.

That portion of the claim for the death of Mathews and Feltner, not having been memorialized, was not passed on by Commissioner Underwood. Without any pleadings other than a memorandum it would seem that such portion of the claim must fail for want of prosecution. Under the Settlement of Mexican Claims Act of 1942, an order will be entered by this Commission disallowing such portion of this claim.

Commissioner Underwood decided that no award be made for the death of William Barry, it appearing that the claimants were not blood relatives, were not dependent upon him for their support and that their only interest was as heirs of Barry's widow who had died before the claim was filed.

In that portion of the claim for the loss of the property, the Commissioner held that the claimants were not entitled to an award because there was not sufficient evidence that the claimants or their predecessors in interest had actually owned the property as alleged. He also discussed at length the evidence as to nationality, holding that some interests were proven nationals and others not. He did not determine any other essential points, holding that it was unnecessary to consider the evidence further.

The claimants contend that Commissioner Underwood was in error in all his findings as to nationality and that the evidence offered as to ownership of the property was sufficient since it was permissible to file secondary evidence; additional evidence as to nationality and as to ownership of the property is now offered. The Commission has ordered the receipt of additional evidence under section 4(d) of the said Act.

The record discloses that the original title papers were burned and indicates that considerable effort was made against difficulties to obtain registration records. These were destroyed during the Madero revolution. Under the circumstances, we hold that the showing made by the secondary evidence adduced is sufficient to prove that the claimants, or their predecessors in interest, have established their ownership of mining property.

The testimony as to the value of the mines covers a wide range, estimates thereon varying from \$3,000,000 to \$200,000. There is also evidence to the effect that the partnership refused an offer of \$200,000 in cash for this said property (Mem., p. 159).

It is alleged that the operation of the mine was profitable but the evidence to support such allegation is so vague and indefinite that it can afford no reasonable basis for an award. However, there is sufficient evidence of destruction of property, or of abandonment thereof, to support an award. The amount of damage suffered has not been shown with desirable exactness, but the record, in our opinion, fairly justifies a factual determination of the expenditure of \$40,000 for the smelter and other improvements shown to have been destroyed or abandoned (Mem., Annex 2, 29, pp. 158, 159. Annexes 4, 5, p. 25.)

As above indicated liability is sought to be predicated upon the failure of the Mexican Government to furnish adequate protection which resulted in the forced abandonment of the mines. The evidence in the record relating to the responsibility of the Mexican Government consists of an affidavit of W. D. Davis (Mem., Annex 2, p. 14) to the effect that he, accompanied by his father,

“ . . . personally called upon Amador Cardenas for police protection, which protection was by Amador Cardenas refused, he stating to affiant, in the presence of his father, that they would have to take their chances.”

It is further stated (Mem., Annex 22, p. 95) that he (Cardenas)

“ . . . positively refused to give said affiant and his associates the protection that they were entitled to as citizens of the State of Texas, United States of America, but aided and abetted the said employees and ranchmen on his properties to commit said criminal and unlawful acts, including the mur-

dering of affiant's associates as well as the destruction of their personal property, which they had lawfully acquired."

There are also affidavits of W. O. Journeay and J. D. Bruckner, and a letter from Barkley F. Yost, American Consul, corroborating the testimony of W. D. Davis, Jr., to the effect that the said Amador Cardenas was an official of the Mexican Government in the territory in which the mines were located. He is referred to as the "jefe politico" in the aforesaid letter from the United States Consul (Annex 25, p. 125) and elsewhere in the record.

From the foregoing testimony we conclude that said Amador Cardenas was an official of the Mexican Government in the territory where the mines are located; that he was cognizant of the acts of destruction which forced the abandonment of the mines; that appeals were made to him for protection which was refused and that he was himself guilty of complicity in the acts complained of.

We are of the opinion that the Mexican Government was clearly called upon to refute, if it could do so, the claim as to Cardenas' official status. This is in line with the principle announced by the General Claims Commission in the case of *William A. Parker* (Opinions of the Commissioners (1927) 35, 39) wherein the Mexican Government was denied the right merely to "wait in silence in cases where it is reasonable that it should speak." In its reply brief the Mexican Government does not specifically deny the allegation as to the official status of Cardenas but alleges an inability to obtain evidence on this point because of the long period elapsing since the date when the claim is alleged to have arisen. It is also stated that the claimant has not shown where the said Cardenas was "jefe politico" and local judge. This answer to the allegation as to Cardenas' official status does not seem to us to carry much weight. The testimony clearly indicates that the said Cardenas was the "jefe politico" in the place where the mines were located, namely, San Lorenzo District, near Cuencame, Durango, Mexico, and the Mexican Government was clearly under a duty to disprove claimants' contention and proof on that point.

The documents which we have received by way of additional evidence appear to us to establish satisfactorily the citizenship of Mrs. Maurice Dewey, Henry L. Dignowity, Sallie S. Dignowity, formerly Sallie S. Davis, and Henry Edward Dignowity. No award can be made for the three-sevenths interests of Michael T. Davis, John Feltner and William Barry. Michael T. Davis died in 1902 and was survived by his wife. She is not a claimant herein. Likewise, it is not shown that any of the claimants have an interest in the shares of William Barry or John Feltner.

Upon the entire record we hold that the only item for which an award may be made is that of \$40,000 for the loss of the smelter and improvements, and that the claimants W. D. Davis (William D. Davis, Jr.), Sallie S. Dignowity, James H. Davis and Mrs. Maurice Dewey are entitled to four-sevenths thereof or a total sum of \$22,857.14 as their interests may appear, with interest, as provided in section 7 of the Act aforesaid, from January 1, 1886.

An application having been made by the claimants, pursuant to section 5(c) of the Act aforementioned, for determination and

apportionment by the Commission of just and reasonable attorney's fees for services rendered by Everet L. Bono and by C. E. Coolidge, the Commission finds upon the entire record that just and reasonable allowances for such services would be 7.5 per cent of the said award to Everet L. Bono and 2.5 per cent of the award to C. E. Coolidge. The Commission accordingly awards to Everet L. Bono 7.5 per cent and to C. E. Coolidge 2.5 per cent of the aforesaid award to claimants.

DECISION No. 42-C

General Dockets Nos. 200 and 3333. Claimant: Inde Gold Mining Company. Amount claimed: \$50,000.00. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 29 dated June 3, 1944).

The claim is predicated upon the alleged failure of authorities of the Mexican Government to provide adequate protection to claimant's mining property situated near the town of Cieneguilla, State of Durango, Mexico, during the period from June 1, 1920 to September 1, 1926. As a consequence of that failure it is said the claimant was obliged to incur expenses in the amount of 73,496.15 pesos, presumably in maintaining a skeleton organization of employees on the property for the protection thereof. Claimant succeeded in effecting a sale of the property on September 1, 1926.

The American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, in holding that the claim was without merit, stated that in the event the losses for which claim is made were not incorporated in the claim on behalf of this claimant which was disposed of by the Special Mexican Claims Commission, they nevertheless constitute indirect losses for which he considered no liability exists under international law.

Claimant, in its petition for review of that appraisal, urges that the American Commissioner failed to give proper consideration to the evidence adduced in support of the claim and that he ignored the decision of the Special Mexican Claims Commission, above referred to, in which an award was made on account of expenditures incurred in preserving and protecting the property prior to June 1, 1920.

It seems probable that the claimant, in referring to the decision of the Special Mexican Claims Commission, as a basis for a review of the appraisal of the American Commissioner, has failed to distinguish between the circumstances essential for the establishment of liability under the Special Claims Convention of September 10, 1923, and those requisite for the existence of liability under the General Claims Convention of September 8, 1923. Under the former it is necessary, of course, to establish only the extent of the loss for which claim is made and the fact that the damage was caused by acts of one or more of the specific forces enumerated in Article III of that Convention. The existence of liability under the

latter mentioned Convention must be determined with reference to the rules and principles of international law.

The period covered by the present claim clearly excludes it from the jurisdiction of the Special Claims Commission created under the Convention of September 10, 1923, and the question of liability must therefore be determined in accordance with the terms of the General Claims Convention of September 8, 1923. The existence of liability under the latter mentioned Convention for a failure to provide protection depends upon several factors, namely, whether the respondent government knew or should have known of the need for protection; whether it was in a position to provide it, and, those two conditions being made to appear affirmatively, whether a failure to provide protection has in fact been established.

Applying this test to the facts of the instant case, it seems clear that a proper basis of liability has not been established. Even assuming that the Mexican Government was aware of the need for protecting claimant's property (although it does not appear that specific requests for protection were made by the claimant during the period here involved), it is not shown in a satisfactory manner either that the government was in a position to provide completely adequate protection or that it failed in its duty to do so. While the record indicates that the region in which the claimant's property was located was to some extent unsettled after June 1920, it is also shown that other mining properties were being operated in that vicinity at that time.

In a report by a representative of the claimant company (Robert McCart, Jr.), dated July 22, 1921, following his visit to the property in May of that year, he stated:

"Inde and the surrounding country is quiet and apparently very much as in the days before the Revolutionary disturbances. Practically all the public offices have been re-established at Inde and there is quite a population at the little village of Cieneguilla. The Guadalupe Company was able to procure all the workmen they cared to employ at the time I was there. Wages are somewhat higher than formerly and an eight hour shift now constitutes a day's work in all cases." (Annexes to Memorial, Section IV, p. 6-C)

In a letter dated August 2, 1920, from L. H. Seigler to Mr. McCart appears the following:

"According to newspaper reports it seems that Villa has come to terms with the Government . . . Mexico is getting on solid basis very fast and I see no reasons why companies cannot start work, one draw back, labor will be very scarce." (*Ibid.*, p. 3)

Other information in the record indicates that during the period in question (1920-1926) the Mexican Government was using available means at its disposal to put an end to the unsettled conditions as rapidly as possible. It seems not improbable from the information which is furnished that the failure of the claimant to resume operations after May 1920 may have been due in large measure to financial difficulties rather than to the failure of the Mexican Government to provide protection.

The Commission is unable to conclude from the record before it that the charge of lack of protection during the period subsequent to May 1920 has been established by satisfactory evidence. Apart, however, from the question of liability, which is determinative of the claim, the record with respect to the losses alleged to have been sustained appears to be so lacking in essential clarity and particularization as to be insufficient to support an award.

For these reasons the Commission decides that the claim must be disallowed.

DECISION No. 11-C

General Docket Nos. 3394, 3356. Claimant: Will C. Hogg and Mike Hogg. Amount claimed: \$815,225.00. Amount awarded: \$476,204.00.

Claim in the amount of \$815,225, or alternatively for an order restoring the property to claimants, was asserted in the Memorial before the General Claims Commission for damages suffered in connection with the nullification of title to, and the seizure of, certain land consisting of about 66,010 hectares or about 163,045 acres and situated in the District of Rio Grande, Coahuila, Mexico, belonging to the Compañía de Terrenos y Canados San Rodrigo, S. A., hereinafter called Compañía, a Mexican corporation, of which claimants own all the stock.

Compañía acquired the property in 1917 for 175,000 pesos, or about 54 cents per acre. In 1922 Will C. Hogg and Mike Hogg purchased a one-half interest in the capital stock of Compañía on the basis of the land being worth \$1.75 per acre. Thereafter, and in the same year, Raymond Dickson transferred to the claimants a one-sixth of the capital stock of Compañía owned by him, and each of the three then owned one-third of the total stock of the corporation. On October 1, 1924, Dickson made an absolute transfer of the balance of his stock to the Hogg brothers and the claimants thereby became owners of all the stock of Compañía, one-half each. It is alleged that thereafter with money paid into the corporation by the claimants, Compañía made extensive improvements upon and stocked the land with fine cattle, and continued to operate it as a ranch for cattle raising purposes.

On May 22, 1924, President Obregon issued a decree which declared null and void a contract entered into in 1881 between the Mexican Government and one Ornelas concerning the survey, purchase and sale of certain lands located in the State of Coahuila. This decree was published on June 10, 1924. Thereby, the title to all property derived through the deed to Ornelas, including claimants' title thereto, was also declared null and void. By another decree, dated April 8, 1926, 119 hectares of Compañía's land were taken and bestowed upon inhabitants of a certain town as *ejidos*.

Compañía obtained *amparo* in 1925 against the 1924 decree on the ground that it had not been given sufficient notice of the proposed nullification of its title. Appeal from this decision was taken by the Government to the Supreme Court of Mexico. This case was still pending on March 24, 1931, when the Memorial was filed.

Claimants retained possession of the entire property, excepting 119 hectares possession of which was lost by the claimants on or about May 7, 1926, under Presidential decree of April 8, 1926, until June of 1943. Claim was made before the General Claims

Commission at the rate of \$3.50 per acre for 163,045 acres, making a total of \$570,657.50 plus \$244,567.50 for the value of subsoil rights at the rate of \$1.50 per acre, the total value of the land being asserted as \$815,225.

Commissioner Underwood assigned to this property the values which were applied for pasture lands in the claims of *Corralitos* (United States v. Mexico), Docket Nos. 1220, 3343, 1953, 3344, and *Azcarate* (United States v. Mexico), Docket No. 3349, namely, \$2.00 per hectare, or 81 cents per acre. He also allowed \$60,000 for improvements. The total allowance was \$192,020.

Petitioners urge on review (1) that Commissioner Underwood erred in his finding as to the value of the land, their contention being that the testimony in the record established a much higher value than that which he assigned to it; (2) that the allowance for improvements was inadequate; (3) that he was wrong in failing to make an allowance for the value of the alleged subsoil rights; (4) that there was error in his holding that the corporate owner was dispossessed on December 31, 1926, rather than on June 29, 1943; and (5) that damages should be fixed as of November 19, 1941, the date of the Claims Convention between the two governments, or October 6, 1940, the limit of the jurisdiction of this Commission, or June 29, 1943, the date when claimants were dispossessed.

We think petitioners' first contention bears merit. The record contains affidavits of seven highly qualified and disinterested witnesses, all familiar with the value of ranch lands in the vicinity of claimants' property, setting a value of \$3.50 per acre thereon. Their testimony seems to the Commission to be entitled to great weight. The sale made to Hogg brothers in January, 1922, at the rate of \$1.75 per acre is also a reliable indication of value. Based upon the latter figure and also upon the further fact that the property had in 1924 received the benefit of substantial improvements, its value having been particularly enhanced by an ample supply of subsurface water resulting from the drilling of wells, the Commission concludes that a fair valuation of the land as of the date of the nullification decree, May 22, 1924, is \$2.25 per acre.

Petitioners' second contention likewise is a valid one. W. B. Ferguson, auditor of the books and accounts of *Compañía*, makes affidavit, dated May 23, 1927, stating that he audited the books of the corporation for the period from August 1, 1921 to April 30, 1926 and that they showed an expenditure for improvements during that period of \$109,353.57. Although the said expenditures are itemized in said report, the dates are not shown. The other testimony in the record, however, is to the effect that the improvements were upon the property on June 10, 1924, the date of the nullification of claimants' title. In the opinion of the Commission, it would not be likely that claimants would have added to their improvements soon after June, 1924, when their title had already been nullified. Accordingly, the claimants should have been allowed \$109,353.57 for the improvements shown to have been on the property at the time of the aforesaid decree of nullification.

The evidence as to the presence of any oil on the property exploitable for commercial purposes as set forth in claimants'

third contention is not sufficiently persuasive to warrant an allowance therefor.

With respect to petitioners' fourth contention it is considered that inasmuch as claimants were not actually dispossessed until June 29, 1943, no interest can be allowed. Under section 7 of the Settlement of Mexican Claims Act of 1942 interest on an award or appraisal runs only up to November 19, 1941. As to the 119 hectares or 294 acres of said tract affected by the Presidential decree of April 8, 1926, interest should be allowed from May 7, 1926, the date of the actual dispossession of claimants therefrom.

Petitioners' fifth contention is without merit. Since it is undisputed that claimants continued to enjoy the income from and possession of the property from May 22, 1924 to June, 1943, there would be no basis for a new claim, i. e., for losses occurring after August 30, 1927, the limit of Commissioner Underwood's jurisdiction. Claimants' loss was sustained on June 10, 1924, as aforesaid, and damages must, therefore, be calculated as of that date. No claim may properly be asserted here for the value of the land beyond that date.

An award is accordingly made to the claimants, or their successors in interest, of \$476,204.82, arrived at as follows:

163,045 acres at \$2.25 per acre	\$366,851.25
Cost of improvements	109,353.57
	476,204.82

Interest is allowed on the sum of \$661.50 from May 7, 1926, as aforesaid.

DECISION No. 43-C

General Docket No. 3357. Claimants: J. L. Burt, S. H. Neil, C. A. Neil, and E. L. Beck. Amount claimed: \$69,590.00. Amount awarded: \$24,320.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 51 dated October 2, 1944).

The claim is based upon the expropriation of 448 hectares of land comprising a part of the hacienda Huejotitlan, situated in the Municipality of Teocuitatlan, State of Jalisco, Mexico, under a Presidential decree dated December 3, 1925.

This property was acquired on or about April 14, 1916, by the Compania Refaccionaria Jalisciense, S. A., a Mexican corporation, the stock of which has at all times been owned by American citizens.

On October 23, 1931, the company allotted to J. L. Burt and Mrs. J. L. Burt, American citizens, 30 per cent and 70 per cent, respectively, of the losses resulting from the above-mentioned expropriation.

The area expropriated was not classified in the decree of December 3, 1925, but claim therefor was made on the following basis:

	Pesos
192 hectares of irrigated land at 440 pesos per hectare.....	84,480
70 hectares of second grade tillable and irrigated land at 250 pesos per hectare	17,500
186 hectares of second grade tillable and irrigated land at 200 pesos per hectare	37,200
448	139,180

This amount was said to be equivalent to \$69,590, United States currency.

For purposes of his appraisal of the claim, the American Commissioner designated under the General Claims Protocol between the United States and Mexico of April 24, 1934, applied to the first class of land mentioned above, a value of \$50 per hectare and to the other two classes a value of \$14 per hectare, resulting in a total appraisal of \$13,184 for the 448 hectares.

The principal objection to that appraisal made in claimants' petition for review is that the values employed by the American Commissioner do not adequately represent the reasonable value of the expropriated area.

Additional evidence in support of the claim was received by this Commission under the provisions of section 4(d) of the Settlement of Mexican Claims Act of 1942.

It is the opinion of the Commission, on the basis of all the evidence which has been filed in support of the claim, that the objection made to the previous appraisal of the claim is not without merit. While the values placed upon the land by the claimants are not convincingly supported by the record, the Commission is satisfied that substantially higher values than those applied in the previous appraisal are established by the evidence. It accordingly fixes the fair and reasonable value of the irrigated land (192 hectares) at \$100 per hectare, and the value of the remaining second grade land (256 hectares), at \$20 per hectare. This amounts to a total valuation of \$24,320. The respective interests in this amount are:

J. L. Burt	30% or \$7,296
Mrs. J. L. Burt	70% or \$17,024

An award is accordingly made in favor of the claimants in those respective amounts with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942 from December 3, 1925.

DECISION No. 26-C

General Docket No. 3377. Claimant: Percy W. Storey. Amount claimed: \$12,000.00. Amount awarded: \$2,320.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the General Claims Protocol between the United States and Mexico signed April 24, 1934, and a review of that appraisal having been granted by this Commission (Order No. 52 dated November 11, 1944).

This claim, in the sum of \$12,000, is for losses alleged to have been sustained as a result of the sale on March 1, 1926 of claimant's land for delinquent taxes. It is alleged that the sale was made without complying with the procedure prescribed by Mex-

ican law and at a mere fraction of its value. The land consists of about 80 acres situated in the La Palma Colony, District of Altamira, Tamaulipas, Mexico. Annex 2 to the memorial shows that claimant acquired his "29 hectares more or less" by deed of May 28, 1909, from one J. L. Friedman for a consideration of 116 pesos.

Commissioner Underwood found the claim to be meritorious for \$2,320 with interest thereon from March 1, 1926. Said appraisal was based upon a valuation of the land at \$80 per hectare. This was the amount allowed by Commissioner Underwood for similar lands in the so-called *Altamira* cases (Docket Nos. 3336 *et al.*). The land involved in this claim was situated in the District of Altamira, as aforesaid. However, no award was made to the claimant herein, Commissioner Underwood holding that there was insufficient evidence to establish the American nationality of the claimant and that there was, therefore, "no jurisdiction."

In the petition for review claimant raises no question as to the adequacy of the value placed upon his lands as aforesaid, but contends that Commissioner Underwood erred in his holding with respect to the nationality of the claimant. The evidence as to American nationality submitted to Commissioner Underwood consisted of an affidavit dated June 3, 1927 sworn to by one Oliver Frank Storey (Mem., Annex 1) and recorded in the Office of Register of Deeds of Milwaukee, Wisconsin. This affidavit was apparently filed because of the absence of any earlier record as to the birth of the claimant. There was set forth in said affidavit the fact of claimant's birth in Milwaukee, Wisconsin, on January 10, 1882, and the names, addresses, places of birth, and occupations of his parents. The same bore the heading "Original Certificate of Birth" and was accompanied by a certificate from the Register of Deeds of Milwaukee County to the effect that the same was a transcript from the official records in his office. Commissioner Underwood held this affidavit to be insufficient to prove citizenship because the affiant had not stated therein the source of his information.

This Commission has received as additional evidence under section 4(d) of the Settlement of Mexican Claims Act of 1942 an "Original Birth Record—Delayed" executed by the claimant on December 14, 1942, and filed in the office of the State Board of Health, Bureau of Vital Statistics, State of Wisconsin, County of Milwaukee, together with a certificate from the State Registrar, Bureau of Vital Statistics, to the effect that such document is on file in his Department. The said "Original Birth Record" contains an "Abstract of Supporting Evidence" in connection with the filing thereof.

From a careful consideration of the evidence submitted to the General Claims Commission as aforesaid and the additional evidence above referred to, this Commission concludes that the American nationality of the claimant has been established.

The Commission likewise is of the opinion that the aforesaid appraisal of this claim at \$2,320 is amply supported by the evidence adduced before the General Claims Commission.

Accordingly, the claimant is awarded the sum of \$2,320 with

interest, as provided in section 7 of the aforesaid Act, from March 1, 1926.

DECISION No. 31-C

Agrarian Docket No. 6. Claimant: Pine King Land and Lumber Company. Amount claimed: \$156,256.00. Amount awarded: \$148,153.12.

This claim, in the sum of \$156,256, is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 19 dated February 5, 1944).

The claimant, an Arizona corporation, filed the claim with the Agrarian Claims Commission, alleging ownership of some 209,111 hectares of long-leaf yellow pine timber land in the Districts of Mina and Andreas del Rio in the extreme southwestern part of the State of Chihuahua, Mexico, and claiming loss of a portion of said land by expropriation as follows: 120,226 hectares by a decree of October 26, 1929 and 4,780 hectares by a decree of July 8, 1938. The evidence establishes the American nationality of the claimant corporation and of its sole stockholder, as well as claimant's ownership of the tract of land in question. The two aforesaid decrees of expropriation are likewise established by satisfactory proof.

The American Commissioner, in his appraisal, evaluated the land expropriated at one peso per hectare. In its petition for review and its brief and two supplemental briefs in support thereof claimant contends that the appraisal made by the American Commissioner was inadequate and failed to result in payment of just compensation to it for the reason that the value of the land determined by the American Commissioner was too low and for the further reason that the said American Commissioner failed to award any damages for the items of taxes, attorney's fees and expenses, such as the cost of caretakers.

Claimant's contention that the land in question was appraised by the American Commissioner at too low a value seems to have merit. Two disinterested witnesses, Roy F. Ward and George Millar, gave evidence as to value. These witnesses presented facts as to their knowledge and past experience which amply qualified them as experts in timber and timber land values in the area in question, including the land involved herein. The evidence of one of these witnesses is in great detail and resulted from an extensive inspection of the land involved, made personally, by the witness, including an inspection of means of transporting timber from the area to market. He stated that it would be "quite feasible to construct flumes in the smaller tributaries of the Sinaloa and Fuerte Rivers and transport logs from this tract to the mouths of the rivers in the Gulf of California, from which point shipment could be made to whatever market might be selected." His estimate was "that 90 per cent of the acreage of this tract will average 5,000 feet per acre of pine lumber, making a total of two billion and two and one half billion feet of such lumber, the reasonable value of which is not less than 50 cents per thousand feet of standing timber . . ." The tract is stated to be "strictly pine timber land."

Both witnesses stated that the land had a value of \$1.25 per hectare, United States currency.

The Agrarian Commissioner, in arriving at his appraisal, appears to have been influenced to a considerable extent by consideration of the element of non-use of the property by claimant, observing in his opinion "That nothing has been done with the property by the owner at any time since its purchase more than 25 years ago seems to be significant." It would seem only proper to observe further that the record indicates that in 1909, following purchase of control of the Pine King corporation through stock acquisition in 1908, as aforesaid, an investigation of the tract was begun to determine development possibilities, the results of which are set forth in the affidavits of the investigators, above referred to, but that in 1910 possibility of development was eliminated as a result of internal conditions in Mexico until about 1920 and that in 1924 an action for nullification further interfered with possible development down to the date of expropriation. The Agrarian Commissioner appears also to have given little weight to the testimony of the experts above mentioned, as to value. In the circumstances this Commission is of the opinion that the evidence of the experts possesses strong probative force, especially in the absence of contradictory or off-setting testimony.

The price paid by claimant for the land is also a factor worthy of consideration although, of course, not controlling. The land was purchased by claimant in 1903 through the assignment from Frank L. Butterfield of an option agreement to purchase from the then owner, one Luis Garcia Teruel. The consideration paid by claimant was \$250,000 cash and \$3,500,000 in stock of claimant company. Butterfield returned to the claimant stock in said company in the amount of \$1,815,000. Under the agreement claimant paid an additional sum of \$50,000 to Teruel, the former owner, and later bought two small pieces of land for the sum of 1,060 pesos. This land constituted the only asset of the Pine King Land and Lumber Company. All the stock of the Pine King Company was bought by the McShane Lumber Company in the years 1907 and 1908 for the sum of \$148,037.66, United States currency.

Upon the basis of the entire record as to value this Commission concludes that at the time of the respective expropriations, the land expropriated had a reasonable value of two and one half pesos per hectare.

Those parts of the claim based on payment of attorney's fees, taxes and other expenses, such as cost of caretaker, are disallowed. The expropriation of land by the Mexican Government was a legal act, provided that just compensation was made therefor. The convention under which claimant's claim is now being considered by this Commission sought to secure such just compensation for claimant and all other claimants whose claims might come within the scope of this Commission's jurisdiction. Attorneys' fees expended in resisting such expropriation are therefore held not to be recoverable.

The claim for taxes cannot be allowed since the record fails to disclose that the taxes sought to be recovered were taxes which claimant was forced to pay on the particular area of land expro-

propriated. In the absence of such showing, no award can be made.

The claim for expenses of a caretaker of land which has been expropriated is not allowable.

Claimant's damage, therefore, is computed as follows:

<i>Date expropriated</i>	<i>Hectares</i>	<i>Pesos per hectare</i>	<i>Total pesos</i>	<i>Exchange rate</i>	<i>U. S. currency</i>
10/26/29	120,226	2.50	300,565	2.0627	\$145,714.35
7/ 8/38	4,780	2.50	11,950	4.90	2,438.77
					148,153.12

The claimant, Pine King Land and Lumber Company, is accordingly awarded the principal sum of \$148,153.12 with interest, as provided in section 4 of the Act as follows: on \$145,714.35 from October 26, 1929; on \$2,438.77 from July 8, 1938.

DECISION No. 8-C

Agrarian Docket No. 22. Claimant: Ross Elmer Neel. Amount claimed: \$183,192.00. Amount awarded: \$59,335.72.

This claim, in the sum of \$183,192, is for the value of 771 hectares of land situated near the Municipality of Ensenada, in the northern district of Baja California, Mexico, which was expropriated under a Presidential decree dated October 5, 1938.

The claimant, a citizen of the United States, is the sole owner of all the stock of the Ventura-Ensenada Land Company, S. A., a Mexican corporation which held title to the land. During a period of years from 1911 to 1917, this company acquired several tracts of land, the total being 773.46 hectares of land, but claimant states that two hectares were not expropriated and asks damages for the loss of only 771 hectares. The total consideration for all the tracts is alleged to have been \$20,550. When purchased it is stated that the property was entirely unimproved and it was necessary to clear the land. The rainfall in that section of Baja California is light, and considerable improvements in the construction of an irrigation system and the sinking of several wells, as well as other improvements, were deemed necessary and are alleged to have cost in excess of \$89,000.

Commissioner Lawson appraised the value of the land taken by expropriation at \$38,009 and the claimant filed a petition for review and a request to file additional evidence. The petition was granted (Order No. 13) and new evidence was received by the Commission. The claim, therefore, must be appraised anew, considering the entire record.

A principal contention in the original claim, and which has been amplified in the petition for review, is that the land and the irrigation system should be considered separately, that is, that the value of the irrigation system should be an additional item of damage.

It is contended by the claimant that municipal courts have frequently appraised the land and the irrigation system that served such land as separate items. This property, however, had an irrigation system that was entirely within and solely used on this property. The high values placed on the land are the re-

sult of this irrigation system. To follow the contention of the claimant would cause a duplication of value, that is, it would add the cost of the irrigation system to the value of the land, which last value was high because of the improvements.

Moreover, the cost of the improvements is not the proper valuation to be placed on the property. It is not the cost, but the value after construction that determines the value of an irrigation system.

The values hereinafter determined by this Commission will reflect and include as part of the real property, the value of the improvements. These improvements include the wells, irrigation system, the orchards, fences and buildings placed on the land by the company.

The claimant has also included as an item of damage certain personal property such as machinery. It is contended that the expropriation has prevented the sale or use of such property. There has been no evidence submitted to show why such property could not have been removed from the hacienda or sold. Nor is there any convincing evidence of liability on the part of the Mexican Government. That item is, therefore, disallowed.

Consideration of the evidence as to the proper classification of the land justifies the finding by this Commission that there were 418 hectares of irrigated land, 60 hectares of temporal land and 293 hectares of land that is unclassified. Some of the evidence as to value presented figures to this Commission that are not convincing. The Commission has weighed all the evidence submitted and finds that a fair and just valuation is as follows:

	Pesos	Pesos
418 hectares irrigated land	675	282,150
60 hectares temporal land	70	4,200
293 hectares unclassified land	15	4,395
Total		290,745

At the date of expropriation, that is, October 5, 1938, the rate of exchange was 4.90 x 1 and the computation places the amount that should be awarded at \$59,335.72, which award should carry interest from the date of expropriation.

An award is accordingly made in favor of Ross Elmer Neel in the sum of \$59,335.72, with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from October 5, 1938.

DECISION No. 5-C

Agrarian Docket No. 66. Claimant: Estate of A. H. Whatley. Amount claimed: \$48,111.01. Amount awarded: \$10,862.00.

This claim was originally filed with the Agrarian Claims Commission on March 4, 1939, in the name of W. A. Whatley, Executor of the Estate of A. H. Whatley for the sum of \$23,803.32.

This original affidavit of claim is for the value of 258 hectares of cultivated land and 500 hectares of pasture land, which had been expropriated by provisional decree of the Governor of Chihuahua out of the lands of El Rancho Los Jacales, District of Hidalgo, in the State above named. The amount of the claim was increased to \$25,673.41 by affidavit of the executor of March 18,

1939, and to \$48,111.01 by his affidavit of May 12, 1939. The presidential decree of expropriation had increased the area expropriated from the hacienda of claimant to 992.4 hectares, the original area of which was 2,222.2 hectares. This decree was dated June 2, 1937.

In the last affidavit, the amount claimed included \$45,568.00 as the alleged value of the entire hacienda, \$896.01 expended in efforts to prevent the expropriation and in preparation of this claim, and \$1,647.00 for loss of use of land from October 1933 to date of affidavit.

Commissioner Lawson appraised the value of the land expropriated at \$5,876.00, and the damage resulting to the unexpropriated area at \$2,500.00. No amount was allowed for loss of use.

This Commission granted the petition for review of the appraisal. Order No. 11, December 23, 1943. Under this order the case is considered on the entire record.

The petition attacks the appraisal of Commissioner Lawson on the ground it was erroneous (1) in the amount allowed for damages sustained as depreciation in value of the unexpropriated portion of the hacienda, and (2) in making no allowance for loss of use following loss of possession in October 1933.

From our examination of the entire record we find no basis for changing the appraisal for the expropriated lands as of June 2, 1937, in the sum of \$5,876.00.

We think that the award of Commissioner Lawson for damage to the unexpropriated land is inadequate. The area which was expropriated divides the remainder into two completely separated tracts, one of which is the 16 hectares of irrigated land, and the other being 1,213.8 hectares of pasture land. Included in the expropriated area was the large spring which was the principal source of water for irrigating the 16 hectares and for the livestock which could utilize the pasture as grazing land. Being deprived of this source of water neither remaining tract has any considerable value. From the evidence and from our personal inspection of the property, we conclude that a more reasonable estimate of the damage suffered by claimant in this respect is \$4,000.00.

The evidence in the record establishes that claimant was receiving 1,000 pesos per year as rentals prior to his dispossession by the agrarians in October 1933, and amply warrants an award of \$986.00, which represents the loss of rentals for the period between October 1933, and the date of the Presidential decree of expropriation on June 2, 1937.

An award is accordingly made in favor of the claimant in the total amount of \$10,862.00, with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from June 2, 1937.

DECISION No. 7-C

Agrarian Docket No. 88. Claimant: Francis A. Stearns, T. L. Stearns, and Robert S. Osgood. Amount claimed: \$319,212.46. Amount awarded: \$112,378.50.

This is a claim to be indemnified in the sum of \$319,212.46 for the alleged expropriation of 1,840 hectares of land situated in

the Municipality of Mexicali, Northern District of Lower California, Mexico. The land was purchased on or about September 16, 1924, by the Compañía Agrícola Civil del Valle Imperial, a Mexican corporation. The claimants have been the owners of all of the company's stock in the following proportions: Francis A. Stearns, 240 shares; T. L. Stearns, 240 shares; and Robert S. Osgood, 20 shares. There is an allotment to claimants.

It is alleged that sizeable sums were spent in irrigating and developing the property. Claimants sold about 45 per cent of the land in 1935. Provisional expropriation decrees were promulgated by the Governor of the Northern District of Lower California on July 12, 1937. Presidential decrees were issued on September 7, 1938, and October 5, 1938, respectively.

By an amended affidavit of claim filed with the American Section of the Agrarian Claims Commission on July 28, 1939, claimants asked reimbursement for losses suffered in connection with lands expropriated, permanent improvements, value of pumping plants, depreciation of unexpropriated lands, and expenses incurred with respect to the protection of their interests during the pendency of the expropriation proceedings, in the preparation of the claim, and certain attorney's and travelling fees.

In appraising the claim Commissioner Lawson found that on the basis of an inspection by representatives of the American Section of the Agrarian Claims Commission "and of all the evidence which has been presented, a fair and reasonable value of the 4000 acres (1619 hectares) which were cleared and included in the expropriation is considered to be 300 pesos per hectare, and that of the balance expropriated (221 hectares), 40 pesos per hectare. This results in a total sum of 494,540 pesos, equivalent, in round numbers, at the rate of exchange (4.90 x 1) applicable on the dates of expropriation, September 7 and October 5, 1938 to \$100,927." The latter sum was allowed by Commissioner Lawson with interest from the date of the expropriation decree of October 5, 1938.

The value of improvements was considered in appraising the land in its improved condition. Commissioner Lawson rejected the item for alleged diminution in the value of unexpropriated land as inadequately proven. Likewise rejected was the item for expenses upon the ground that same were not losses incident to the expropriation.

It is urged upon petition for review (1) that Commissioner Lawson was in error in converting the amount of his appraisal from Mexican into United States currency by applying the exchange rate (4.90 x 1) applicable on September 7 and October 5, 1938, the dates of the final Presidential decrees, instead of the rate subsisting July 12, 1937, the date of the actual seizure of claimants' property under provisional gubernatorial decree, or, in the alternative, the rate of 0.4985 as provided in section 7 of the Settlement of Mexican Claims Act of 1942; (2) that it was error to allow interest from October 5, 1938, instead of July 12, 1937, date of alleged dispossession; and (3) that it was error to disallow the item for expenses. Petition for review was granted. Order No. 12, December 23, 1943.

Petitioners' first contention has no merit. Since under the controlling Mexican law the "ejidatarios" become owners under expropriation decrees only upon "the completion of the proceedings giving final possession," and since under the same law the decrees of the President of the Republic are deemed to be the "final resolutions" which "close a case for restitution, dotation or enlargement of 'ejidos' " the land is properly evaluated, and the exchange rate correctly applied as of the time of expropriation by Presidential decree, or October 5, 1938. Agrarian Code of the United Mexican States, March 22, 1934, as amended to 1937, Title I, Articles 1 and 2; Title IV, Articles 62 *et seq.* and Article 79.

The contention concerning section 7 of the Act of 1942 has been considered in the claim of *Horace W. Corbin*, Series B, Decision No. 3. It is sufficient to say that that section has no application since the appraisal was made in dollars.

With respect to the second contention, it is considered that Commissioner Lawson properly allowed interest on the claim from October 5, 1938, that being the date of the last Presidential decree and therefore the date of final expropriation. We believe, however, that compensation must be made for the loss of the use of the land after claimants were dispossessed; i.e., from July 12, 1937 to October 5, 1938. Exhibit 8-D states that "the rate of 15% of the value of cotton produced (exclusive of seed)" would reflect "the rental basis" for the property.

In computing the amount of cotton produced the said exhibit uses as a basis the three-year period prior to the seizure. The following statistics of production are given for this period:

Crop year	Acres planted	Bales cotton	Gross value cotton U.S. Cy.	Gross value seed U. S. Cy.	Total crop value U.S. Cy.
1934	1,444	1,530	\$89,383.06	\$11,897.10	\$101,280.16
1935	2,000	2,056	108,392.32	20,286.55	128,678.87
1936	1,835	869	47,688.36	9,793.17	57,481.53

The 15 percent yearly rental is computed by the claimants on the basis of the gross value of cotton, \$245,463.74. However, it is believed that the crop for 1936 would represent a fairer basis of estimating the value of the use of the property. The statistics quoted above show great variations in the number of bales of cotton per acre. In 1934, 1,444 acres produced 1,530 bales of cotton, while in 1936 a larger number of acres, 1,835, produced only 869 bales. Likewise, the gross yearly product varies considerably. The following statement in the amended affidavit of claim is also significant in this connection: "In the years subsequent to 1930 the total acreage in the tract which was planted to cotton was considerably reduced due to the low price of cotton which has prevailed." In the circumstances, we consider that the year closest to the year of seizure would offer a fairer basis for computing the rental value. There is no evidence as to the 1937 or 1938 crop. Fifteen percent of the gross value of the crop of 1936 amounts to \$7,153.25. The claimants were deprived of the 1937 and 1938 crops and they would therefore be entitled to \$14,306.50. From this sum there must be deducted a sum of \$2,855 represent-

ing the purchase price of a new Pomona Turbine Pump which was installed on the land in question as an improvement. The pump was paid from "the proceeds from the cotton crop which was raised on said land in 1937." An award of \$11,451.50 is therefore made for the loss of use of the property. The value of the improvements is taken into account in making the award for the expropriated property.

The petitioners have failed to show that Commissioner Lawson was in error in disallowing the item for expenses. III Whitman, *Damages in International Law* (1943) 2028.

It is accordingly ordered that claimants be awarded the sum of \$112,378.50 with interest, as provided in the aforesaid section 7, from October 5, 1938. The respective interests of the claimants in this amount are as follows:

Francis A. Stearns, 48% or	\$53,941.68
T. L. Stearns, 48% or	\$53,941.68
Robert S. Osgood, 4% or	\$ 4,495.14

DECISION No. 35-C

Agrarian Docket No. 102. Claimant: Eleanor Pratt Howard Burt. Amount claimed: \$308,738.75. Amount awarded: \$26,791.68.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938, between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 41 dated August 2, 1944).

The claim arose out of the expropriation under the agrarian laws of Mexico of 995.40 hectares of land comprising a part of a tract designated as Portion III of the hacienda San Jose de Gracia, situated in the Municipality of Teocuitatlán, State of Jalisco, Mexico. The expropriations were effected under two Presidential decrees dated July 9 and October 8, 1935.

Title to the expropriated property was held at all times pertinent to the claim by the Mexican partnership firm of Jose de Luna, S. en C., in which the claimant, an American citizen, is the owner of a 96 percent interest.

In the claim filed with the Agrarian Claims Commission it was alleged that, in executing the above mentioned decrees of expropriation, land in excess of that stated in the decrees was actually taken from the owner and delivered to agrarians. More specifically, claimant's contention in this respect may be represented as follows:

Date of decree	Area stated in decree	Area actually taken
July 9, 1935	446	495.65
October 8, 1935	549.40	1,301.75
	995.40	1,797.40

For the purpose of his appraisal of the claim the American Commissioner accepted claimant's contention with reference to the area alleged to have been taken under the first decree, namely, 495.65 hectares, but considered that the evidence adduced with reference to the second expropriation failed to establish a taking

in excess of the area stated in the decree, namely, 549.40 hectares. He accordingly appraised the claim on the basis of a total expropriation of 1,045 hectares. In so doing he employed the land classification stated in the decrees, the excess area involved in the first expropriation being classified by the Commissioner as *pasture* land. By assigning values of 300 pesos, 70 pesos and 10 pesos, per hectare, respectively, to irrigated, temporal and pasture lands, the Commissioner arrived at a total appraisal of \$11,183.04 for claimant's interest in the 1,045 hectares.

In her petition for review of that appraisal claimant contends *first*, that she is entitled to compensation for a total of 1,301.75 hectares of land allegedly taken under the decree of October 8, 1935 (an excess of 752.35 hectares over the area stated in the decree), and *second*, that the land taken under both decrees had a value "far in excess of that allowed by the former Commissioner."

On September 16, 1944, the Commission authorized the filing of additional evidence in support of the claim under the provisions of section 4 (d) of the above-mentioned Act of 1942.

With respect to the first of claimant's contentions, the Commission is of the opinion that the purpose of the two Governments in entering into the Agrarian Claims Agreement of 1938 was to provide compensation to American nationals who had sustained losses in Mexico through the official action of authorities of that Government in depriving land-owners of the titles to their properties in the execution of the agrarian program in that country. The record in the instant case fails to establish that the effect of the two expropriation decrees of July 9 and October 8, 1935, was to destroy the title of the partnership firm of Jose de Luna, S. en C. (in which the claimant holds a 96 percent interest) to any lands beyond the areas specifically ordered to be expropriated thereunder, namely 995.40 hectares. If, as claimant contends, lands in addition to those specified in those decrees were included in the delineations made supposedly in pursuance to the decrees, such action would appear to constitute a procedure not authorized by the decrees and could not have the effect of nullifying the title to such excess areas. In those circumstances it is believed the claimant should have recourse to remedies provided by Mexican law for the recovery of possession of such land as may have been illegally occupied by agrarians or otherwise. Until it is shown that such remedies have been ineffective, the Commission is of the opinion that a claim for the value of the lands not officially expropriated could not be regarded as well founded.

For this reason the Commission considers that the indemnity to which the claimant is entitled must be limited to the reasonable value of the areas shown to have been expropriated under authority of the two Presidential decrees.

The evidence which was presented bearing upon the potential productive capacity of these lands does not, in the Commission's view, warrant the values placed thereon by the claimant. The Commission is convinced, however, both from its personal inspection of the property and from other evidence in the record that a substantial supply of water is available to irrigate at least certain portions of this property. It is also of the opinion that the classi-

fication of the expropriated areas stated in the decrees does not fairly represent the character of the land expropriated. In determining the extent of claimant's losses it is believed that a more equitable classification and evaluation of the lands in question is as follows:

100.00 hectares at \$100 per hectare.

895.40 hectares at \$20 per hectare.

Since the decree of July 9, 1935 makes no mention of the expropriation of irrigated lands from the claimant, it seems proper to conclude that all of the better class land was affected under the latter decree of October 8, 1935.

On this basis the losses sustained by the claimant may be computed as follows:

<i>Decree</i>	<i>Total loss</i>	<i>Claimants' 96% interest</i>
July 9, 1935	\$8,920	\$8,563.20
October 8, 1935	18,988	18,228.48
	<u>27,908</u>	<u>26,791.68</u>

The Commission accordingly decides that an award be made in favor of the claimant in the principal sum of \$26,791.68 with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 29-C

DECISION No. 6-E

Agrarian Docket No. 105. AMC Docket No. 60. Claimants: Carlos A. Miller and Laura R. de Miller. Amount claimed: \$1,677,251.59. Amount awarded: \$184,742.77.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been previously made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 24 dated May 4, 1944).

The claim presented to the Agrarian Claims Commission for the sum of \$1,580,081.59 is predicated upon losses resulting from the alleged expropriation of 31,472 hectares of land consisting of several tracts, all located in the Municipalities of Ometepec and Cuajinicuilapa, State of Guerrero, Mexico, and in the State of Oaxaca, under numerous Presidential decrees issued during the years 1934-1937. Included in the claim are 3,893.4 hectares alleged to have been expropriated in favor of the poblados "Lo de Soto" and "El Quiza."

Claimants, American citizens, and their predecessors in interest acquired during the years 1877-1910, 86,611.82 hectares, as above described and located, for 36,300 pesos.

The appraisal of Commissioner Lawson is made upon the basis of the definitive and final expropriation of 27,579 hectares under the said Presidential decrees. He found that there was no adequate proof to establish the expropriation of the remaining 3,893.4 hectares of claimants' property. Consequently he made no appraisal for the 3,893.4 hectares. With respect to the 27,579 hectares he allowed the following values:

*Pesos
per hectare*

Humedad land	25
Temporal land	50
Tillable land	20
Pasture land	15
Urban zone	50
with interest on all portions thereof from the various dates of expropriation.	

In arriving at the sum of \$146,046, he based his appraisal on the above values and the following classifications of the expropriated land as indicated in the Presidential decrees.

<i>Decree</i>	<i>Humedad</i>	<i>Temporal</i>	<i>Tillable</i>	<i>Pasture</i>	<i>Urban zone</i>	<i>Total</i>
Aug. 13, 1934	1,948	—	—	8,748	—	10,696
Aug. 18, 1934	270	—	2,052	2,961	—	5,283
Sep. 3, 1934	—	—	1,192	6,247	—	7,439
Sep. 15, 1937	82	—	—	—	—	82
Do	60	176	—	176	8	420
Do	—	352	—	352	8	712
Do	—	536	536	—	10	1,082
Do	120	112	—	262	—	494
Do	84	368	—	368	3	823
Do	145	46	—	326	—	517
Do	31	—	—	—	—	31
	2,740	1,590	3,780	19,440	29	27,579

In their petition for review of that appraisal, claimants contend that Commissioner Lawson appraised the humedad lands at too low a value. In our opinion this contention is meritorious. In his appraisal Commissioner Lawson placed a higher value on temporal land than on humedad land. The humedad land involved in this claim appears to have been used mainly for growing of para grass for pasturage. It is recognized generally that humedad land is substantially better land than temporal land and, in the Commission's opinion, the evidence in the record warrants an award on the basis of 75 pesos per hectare for the 2,750 hectares of humedad land expropriated. The values of the remaining lands as set forth in the appraisal of Commissioner Lawson appear to be fair and reasonable. Application of the above-mentioned value for humedad land, together with the values for the remaining lands as set forth in the appraisal, which were involved in the several Presidential expropriations, results in the following sum:

<i>Decree</i>	<i>Pesos</i>	<i>Rate of exchange</i>	<i>U. S. Cy.</i>
Aug. 13, 1934	277,320	3.55	\$78,118.31
Aug. 18, 1934	105,705	3.55	29,776.05
Sep. 3, 1934	117,545	3.55	33,111.27
Sep. 15, 1937	153,080	3.50	43,737.14
			184,742.77

Claimants have filed a so-called "new" claim with this Commission for \$97,170 predicated upon the alleged taking of their land for the inhabitants of the villages of "Lo de Soto" and "El Quiza,"

aggregating 3,139.38 hectares under Presidential decrees dated July 1, 1936 and December 8, 1937. 1,052.97 hectares are claimed to have been expropriated by the former decree, and 2,086.45 by the latter.

As hereinabove stated, Commissioner Lawson excluded this item of 3,139.38 hectares from his appraisal. If this item is regarded as a "new" claim, this Commission has no jurisdiction to consider it in view of the dates of its origin, to wit, July 1, 1936 and December 8, 1937. Under section 3 (a) (3) of the aforesaid Act the Commission's jurisdiction over "new" agrarian claims is limited to those arising between December 1, 1938 and October 6, 1940, inclusive, and which were not filed with the Agrarian Claims Commission on or before July 31, 1939. Therefore, the so-called "new" claim may not be considered by the Commission except as one on petition for review. In that connection it may be noted that, while there is evidence in the record tending to support the claim that property of claimants was taken in connection with the establishment of ejidos for the communities of "Lo de Soto" and "El Quiza," it does not appear that claimants' title to such property was affected by any formal decree which would give rise to a claim under the agreement between the United States and Mexico effected by the exchange of notes of November 9 and November 12, 1938, respectively. Before an award can be made thereunder there must be official divestiture of title to the property in question, which is admittedly not shown by the evidence adduced.

The only lands forming a part of the aforesaid ejidos which were affected by the Presidential decrees dated July 1, 1936 and December 8, 1937 were those belonging to Sociedad Agrícola, Sociedad Progresista, and Compañía Agrícola de Soto. The record clearly establishes that claimants' lands were not officially expropriated. In the report of Fidel Morales, Field Engineer, dated April 25, 1944 (Annex 2), it is stated that "The portions of land, taken from the properties of Mr. and Mrs. Miller for the formation of the land grant (ejido) 'Lo de Soto' and 'El Quizá' [sic] were not contained in the correspondent Presidential judgments (as printed in the Official Diary and examined thoroughly by the undersigned). According to the mentioned Presidential judgments, lands only from the 'Sociedad Agrícola' and 'Sociedad Progresista' were to be allotted to the said communities."

Moreover, it appears that claimants themselves have been endeavoring to have the alleged taking of their property formalized according to the agrarian laws but that their efforts to date have been unavailing. In a letter to this Commission dated September 12, 1944, it is stated:

"... we have been making exertions in order to obtain that the Agrarian Authorities rectify the possession of the lands that were given to the neighbors of 'El Quizá' [sic] and 'Lo de Soto' as they had offered.

"For conduct of our lawyers we have asked for the rectification; but in spite of our continuous solicitudes they never make this work and we could not oblige [sic] the authorities to make it."

The Agrarian Claims Commission's jurisdiction was limited as aforesaid to the consideration of claims for lands actually expropriated. In the absence of any decrees of expropriation we must hold that Commissioner Lawson did not err in refusing to assume jurisdiction and in making no award to the claimants with respect to the items on which the so-called "new" claim is based.

The Commission holds that claimants are entitled to an award of fair and just compensation for the definitive and final expropriation of 27,579 hectares of their land in the amount above stated with interest. The following award is therefore made herein.

To Carlos A. Miller and Laura R. de Miller the sum of \$184,742.77, with interest from dates of expropriations, as provided in section 7 of the Act.

DECISION No. 41-C

Agrarian Docket No. 116. Claimant: Eleanor Pratt Howard Burt. Amount claimed: \$296,607.08. Amount awarded: \$64,417.69.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 56 dated January 13, 1945).

The claim arose out of the expropriation of 2,413.4 hectares of land comprising a part of the hacienda Huejotitlan, situated in the Municipality of Teocuitatlan, State of Jalisco, Mexico, under three Presidential decrees dated April 21, 1937, February 9, 1938 and February 28, 1940. This property was acquired by the Compania Refaccionaria Jalisciense, S. A., a Mexican corporation, on or about April 14, 1916. At all times pertinent to the instant claim the claimant, an American citizen, was the owner of 99.984 percent of the stock of that company.

Claimant alleged that a total area of 1,005 hectares of land was taken under the decree of April 21, 1937, instead of only 985 hectares as stated in the decree. Claim was accordingly made as follows:

202.0 hectares of irrigated land at \$220 per hectare.....	\$44,440.00
570.1 hectares of seasonal land at \$125 per hectare.....	71,262.50
1,661.3 hectares of pasture land at \$100 per hectare.....	166,130.00
2,433.4	
Depreciation in the value of buildings.....	3,364.58
Legal expenses	4,660.00
Loss of rental	6,750.00
	296,607.08

The American Commissioner designated under the Agrarian Claims Agreement of 1938 considered that the expropriation of a total area in excess of 2,413.4 hectares had not been established and his appraisal of the claim had reference to that area only. By application of values of 300 pesos per hectare for irrigated land, 70 pesos per hectare for temporal land, 30 pesos per hectare for tillable land and 10 pesos per hectare for pasture land, the Com-

missioner arrived at a total valuation of \$29,062 for the 2,413.4 hectares on the basis of the land classifications stated in the several decrees. He disallowed the other items of the claim.

The principal grounds upon which a review of that appraisal is urged by the claimant have reference to the values which the Commissioner placed upon the property and the exclusion from his appraisal of the additional 20 hectares allegedly taken under the decree of April 21, 1937. This Commission authorized the filing of additional evidence in support of the claim under the provisions of section 4 (d) of the Settlement of Mexican Claims Act of 1942.

For reasons stated in this Commission's decision in another claim on behalf of the present claimant (Agrarian Docket No. 102), it holds that the previous appraisal made of this claim was properly limited to the area shown by the decrees to have been expropriated, namely 2,413.4 hectares.

The Commission considers that claimant's objection to the values employed by the American Commissioner in his appraisal, as noted above, is not without merit.

The evidence recently filed and that previously contained in the record justifies, in the opinion of the Commission, a value of \$100 per hectare for the 202 hectares of land classified in the decrees as irrigated, and \$20 per hectare for the remaining 2,211.4 hectares, or a total value of \$64,428.

The Commission does not find in the record in this case evidence which would warrant an award with reference to the other items of claim referred to above.

Claimant's interest in the amount of \$64,428 is 99.984 percent or \$64,417.69.

The Commission accordingly awards to the claimant the principal amount of \$64,417.69 with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 18-C

DECISION No. 4-E

Agrarian Docket No. 118. AMC Docket No. 23. Claimants: Henry H. Stephens, William A. Stephens, Hugh Stephens, and Ellena Vucanovich ("Cacalutla"). Amount claimed: \$1,504,125.00. Amount awarded: \$23,408.50.

This claim is before the Commission pursuant to the provisions of section 4 (d) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 5, dated November 24, 1943).

In the claim presented to the Agrarian Claims Commission claimants sought indemnity in the sum of \$813,500 for the alleged expropriation of 20,000 hectares of land known as Hacienda de Cacalutla, located in the Municipality of Atoyac, State of Guerrero, Mexico. Claimants contended that 3,000 hectares included in the above-mentioned area of 20,000 hectares were taken by a Presidential decree of expropriation dated January 16, 1930.

published in *Diario Oficial* on February 8, 1930 and that the remaining 17,000 hectares were declared to be subject to colonization in a decree of the Mexican Secretary of Agriculture and Fomento dated September 26, 1930, published in *Periódico Oficial* on October 22, 1930.

The claimants are American citizens. William A. Stephens, one of the claimants, bought the above-named hacienda, containing 20,000 hectares, on or about November 27, 1908, for 20,000 pesos and sold it on or about July 10, 1909 for the same price. The two purchasers, each acquiring a one-half interest in the property, were C. L. Vucanovich y Compañía and Stephens Hermanos. C. L. Vucanovich y Compañía was composed of two partners, C. L. Vucanovich and Pedro Cherchens, the latter not being an American national. Upon the death of C. L. Vucanovich, his widow, Ellena Vucanovich, through probate proceedings, became the owner of the two-thirds interest which her deceased husband had owned in said firm. Stephens Hermanos was composed of said three named Stephens claimants. All of said claimants together owned a five-sixths interest in said Hacienda de Cacatlutla, Stephens Brothers owning three-sixths and Mrs. Vucanovich two-thirds of one-half or two-sixths.

The appraisal of Commissioner Lawson is made upon the basis of the definitive and final expropriation of 3,000 hectares under the said Presidential decree of January 16, 1930. No appraisal was made on the remaining 17,000 hectares. Commissioner Lawson held that the decree of September 26, 1930 declaring the same to be subject to colonization did not divest the owners of title thereto. Commissioner Lawson estimated the value of the land to be 3.6 pesos per hectare for the 3,000 hectares expropriated, based upon the then fiscal valuation of 72,000 pesos for the entire 20,000 hectares. He accordingly made a finding of value of the 3,000 hectares expropriated of \$5,209 and recommended an appraisal of claimants' five-sixths interests therein at the sum of \$4,341.

In their petition for review of that appraisal the claimants state (1) that the entire hacienda was taken in 1930; (2) that the values approved were not in accordance with the evidence; and (3) that conversion from pesos to dollar values should have been made at the exchange rate of 0.4985 as provided in section 7 of the Settlement of Mexican Claims Act of 1942, instead of the rate used in Commissioner Lawson's appraisal, 2.0734×1 .

On review, it is the opinion of this Commission that the petitioners' first contention is not well taken. The proof adduced establishes that only 3,000 hectares were affected by the Presidential decree of January 16, 1930. The jurisdiction of the Agrarian Claims Commission established under the Agrarian Claims Agreement of 1938 did not extend to claims arising subsequent to July 31, 1939. Of the 17,000 hectares remaining in the tract of 20,000 hectares involved herein after the expropriation of the aforementioned 3,000 hectares, 11,216 hectares were expropriated by Presidential decree of November 8, 1939 and 5,784 hectares were declared subject to colonization by the decree of September 26, 1930 but were not made the subject of expropriation by Presi-

dential decree. Apparently entertaining some doubt as to this Commission's authority to consider, in connection with their petition for review, the portion of their claim based upon the expropriation of the above-mentioned 17,000 hectares, claimants have presented a new claim in the sum of \$690,625 predicated on the above-mentioned decrees of September 26, 1930, and November 8, 1939. This sum is to be considered as part of the claimed amount of \$813,500 asked for the alleged expropriation of the entire 20,000 hectares.

The Commission holds that claimants' new claim, based upon the Presidential decree of November 8, 1939, is within its jurisdiction as defined in paragraph (4) of section 3(a) of the afore-said Act.

In view of the manner in which the petition for review and new claim have been presented, as noted above, the Commission considers it is appropriate and desirable to dispose of both in a single decision, particularly since they relate to different portions of the same tract of land.

The Presidential decree of November 8, 1939, published in *Diario Oficial* of January 4, 1940, expropriated 11,216 hectares and classified said expropriated portion as follows:

<i>Description</i>	<i>Hectares</i>	<i>Subject to cultivation Percent</i>
Pasture and wooded lands	2,172	28.5
Do	4,771	15.0
Do	1,792	28.5
Do	2,101	15.0
Do	380	28.5
	<u>11,216</u>	

The cultivable portion is approximately 2,269 hectares. The balance thereof, 8,947 hectares, is not cultivable.

As to the 5,784 hectares yet remaining which have not been definitely and formally expropriated and for which claim is made, no award is made herein.

There remains for our consideration the value of the property at the time of the two Presidential expropriations, namely, 3,000 hectares on January 16, 1930 and 11,216 hectares on November 8, 1939. The evidence indicates that the fiscal value averaged 3.6 pesos per hectare. The original purchase price was at the rate of one peso per hectare. There is no proof as to any income derived from the property or as to any improvements made thereon. The evidence as to the use made of the entire hacienda is weak and lacking in probative value.

From the evidence and from the Commission's observations made in its personal inspection of the entire tract the Commission evaluates the said 3,000 hectares at 10 pesos per hectare, or the sum of 30,000 pesos. At the rate of exchange (2.0734 x 1) applicable on the date of this expropriation, January 16, 1930, the land had a value of \$14,469. The claimants' interest is five-sixths, or \$12,057.50.

The Commission concludes also that claimants are entitled to compensation for the 11,216 hectares expropriated by the Presidential decree of November 8, 1939. The evidence adduced and the findings made upon an inspection of the property warrant a valuation of 10 pesos per hectare for the 2,269 hectares of cultivable land and 5 pesos per hectare for the 8,947 hectares of grazing land. This results in the sum of 67,425 pesos. At the rate of exchange (4.95 x 1) applicable at the date of this expropriation, November 8, 1939, the value of the land was \$13,621.21. The claimants' five-sixths interest is \$11,351.

Petitioners' third contention has been considered in the claim of *Horace W. Corbin*, Series B, Decision No. 3. It is sufficient to say that the appraisal was made in dollars and section 7 of the Act aforesaid has no application.

Claimants are accordingly awarded the sum of \$23,408.50, with interest, as provided in section 7 of the Act aforesaid, on \$12,057.50 from January 16, 1930, and on \$11,351.00 from November 8, 1939.

The respective interests of the claimants in this amount are as follows:

\$7,234.50 with interest from January 16, 1930, and \$6,810.60

Henry H. Stephens, William A. Stephens and Hugh Stephens: with interest from November 8, 1939.

Ellena Vucanovich: \$4,823.00 with interest from January 16, 1930, and \$4,540.40 with interest from November 8, 1939.

DECISION No. 55-C

Agrarian Docket No. 132. Claimant: Frederic B. Calvert. Amount claimed: \$3,730.45. Amount awarded: \$1,000.00.

This claim is before the Commission pursuant to section 4 (d) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the expropriation of 5 acres of land which claimant acquired by deed dated February 20, 1929. It was a part of the Hacienda El Porvenir, situated in the Municipality of Soyaltepec, State of Oaxaca, Mexico, and was included in the 416 hectares expropriated to the village of Buena Vista by a Governor's Decree dated July 8, 1938.

A claim was filed with the Agrarian Claims Commission and rejected for want of proof that claimant's land had been expropriated. A petition for review duly filed with this Commission was granted on May 12, 1944. (Order No. 26) Claimant thereafter requested and was granted permission to file additional evidence. This evidence establishes the expropriation of claimant's land, as alleged. The American citizenship of claimant and his ownership of the land are also established. The evidence concerning the value of the land is quite meager. It is shown that claimant at one time received certain revenues from bananas planted on said land, but it appears that claimant ceased to have this source of income for some time prior to the said expropriation. Upon the basis of all the available evidence, we find that the land of claimant had a fair value of \$1,000.00.

An award is accordingly made to Frederic B. Calvert in the sum of \$1,000.00, together with interest from September 1, 1938,

as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 4-C

Agrarian Docket No. 134. Claimant: Indianola Tropical Land Company. Amount claimed: \$27,556.00. Amount awarded: \$8,073.60.

This is a claim to be indemnified in the sum of \$25,576.00 for the alleged expropriation pursuant to Presidential decrees of January 16 and February 1, 1930 of 558 hectares of land situated in the Municipality of Playa Vicente, State of Veracruz, Mexico. The land was taken from a tract of about 6,495 hectares which claimant company had acquired in 1910 for a recited consideration of 20,000 pesos and an alleged consideration of \$92,287.50, or about \$14.20 a hectare. Beyond the mere statement by claimant that "it was not an abandoned property" there is nothing in the record to show that claimant company ever occupied or used the land. The fiscal value of the property was 129,910 pesos, or about 20 pesos per hectare.

Commissioner Lawson found that there is little evidence in the record to show that the value of the land substantially exceeded its fiscal value and appraised the land at the rate of 25 pesos per hectare, or in the total amount of 13,950 pesos, or \$6,728.00, with interest from the date of expropriation.

On petition for review, it is contended (1) that the appraisal is not just compensation because damages were erroneously assessed upon the basis of the tax value of the land in disregard of other evidence in the record concerning value as stated in the expropriation decrees, the affidavits, and correspondence, particularly the affidavit of J. W. Slocum and the certificate of Professor C. W. Emmons, (2) that severance damages should have been allowed, and (3) that the appraisal was improperly reduced by valuing in pesos and converting at the applicable rate of exchange.

This Commission granted the petition for review of the appraisal (Order No. 23, May 4, 1944). The case now comes on to be decided pursuant to section 4(d) of the Settlement of Mexican Claims Act of 1942.

There is no convincing evidence in regard to the property's value except for the cost figure of \$14.20 per hectare. The statements in the affidavit of J. W. Slocum and the certificate of Professor C. W. Emmons are weak and altogether lacking in probative force. The expropriation decree speaks generally of the crops cultivated in that section but no specific reference to claimant's particular property is made therein. The correspondence is likewise very vague and affords no basis for the ascertainment of value. Based upon the cost figure of \$14.20 we think that the land should be valued at 30 pesos per hectare, or in the total sum of 16,740 pesos. Converted at the exchange rate prevailing upon January 16 and February 1, 1930, the dates of expropriation (2.0734×1), this amount is equivalent to \$8,073.60.

Severance damages are not allowed in the absence of proof. The record is barren of any satisfactory evidence on this point which would warrant an award on the basis thereof.

Claimant's third contention has been considered in the claim of *Horace W. Corbin*, Series B, Decision No. 18. It is sufficient

to say that the appraisal was made in dollars and section 7 of the Settlement of Mexican Claims Act of 1942 has no application.

Accordingly, Indianola Tropical Land Company is awarded the principal sum of \$8,073.60 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942 from February 1, 1930.

DECISION No. 44-C

Agrarian Docket No. 155. Claimant: Pleasant E. Crabtree. Amount claimed: \$6,212.60. Amount awarded: \$3,836.73.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico and a review of that appraisal having been granted by this Commission (Order No. 42, dated August 3, 1944).

The claim is based upon the alleged expropriation of 793 hectares of land (said to be equivalent to 1,982.5 acres), comprising a portion of the hacienda El Chamal, situated in the Municipalities of Ocampo and Morelos, State of Tamaulipas, Mexico, under a decree of the Governor of that State dated December 13, 1937, which was confirmed by Presidential decree dated Sept. 28, 1938.

It is alleged that the claimant obtained 665 hectares of this property by purchase in 1910 and the balance of 128 hectares in 1924. However, the deeds offered in evidence establish the conveyance to claimant of only 729 hectares. While the deeds recite a total consideration of only 1,520 pesos for the entire property, claimant states that he paid \$2,595 therefor.

The evidence presented in support of the claim does not disclose in a satisfactory manner the use which was made of this property from the date of its purchase by the claimant to the time of its alleged expropriation. It is stated that 110 acres were in cultivation in 1937, about four acres being planted in sugar cane and certain other unspecified areas in fruit trees. The balance of the land appears to have been pasture and woodland. Details regarding the nature and extent of the income derived from the property are not furnished. It appears that the land was being rented part of the time.

In claimant's affidavit of April 12, 1939, he states that all but 160 acres of his property had been expropriated in 1937. In his affidavit of August 3, 1939, however, he states that all of his property had been included in the expropriation under the Governor's decree of December 13, 1937, which took a total of 1,733 hectares for the agrarian community of *La Roncha*. In an affidavit of May 13, 1940, claimant enumerates his losses, exclusive of interest, as follows:

Value of land at time of expropriation.....	\$4,792.60
Improvements	1,420.00
	6,212.60

Neither the Governor's decree of December 13, 1937 nor that of the President dated September 28, 1938, mentions the names of the owners from whom land was expropriated thereunder. It was

contended by Mexico that the land was in the name of the Blalock Colony and that the purported deeds from that Colony to claimant were mere attempts to evade the agrarian law. However, the facts appear to be that such deeds were recorded in Mexico and that the original transfers were made and recorded before the passage of the agrarian law under which expropriations were made. Several affidavits were filed in support of the claim which in a general way tend to corroborate claimant's contention that his property had been expropriated.

The American Commissioner designated under the Agrarian Claims Agreement of 1938, between the United States and Mexico, concluded that the evidence presented did not convincingly establish that claimant had been officially deprived of his property and he accordingly made no appraisal of alleged losses.

The petition for review filed on behalf of the claimant contends that the American Commissioner erred in reaching such conclusion.

This Commission authorized the filing of additional evidence in support of the claim under section 4(d) of the Settlement of Mexican Claims Act of 1942. On the basis of the entire record, including such additional evidence, the Commission concludes that lands of the claimant have been expropriated. The Commission recognizes the difficulty of securing proof as to the extent of said expropriation, and although the evidence with respect thereto is meager, the Commission finds that upon the basis of the entire record the evidence is sufficient to establish the expropriation of 479 hectares.

This land was among the most desirable in the El Chamal hacienda and it appears that the expropriated area contained most of the available water supply. The remaining unexpropriated portion was thereby rendered less valuable.

Taking all of the above-mentioned factors into account, the Commission concludes that the losses sustained by the claimant may be reasonably and fairly represented as follows:

	Pesos
44 hectares of improved land at 300 pesos per hectare.....	13,200
435 hectares of pasture land at 10 pesos per hectare.....	4,350
Depreciation in the value of remaining land (250) hectares at 5 pesos per hectare)	1,250
	18,800

This amount is equivalent at the rate of exchange applicable on the date of expropriation (4.90 x 1) to \$3,836.73, United States currency.

An award is accordingly made in favor of the claimant in the amount of \$3,836.73 with interest, as provided by section 7 of the Settlement of Mexican Claims Act of 1942, from September 28, 1938.

DECISION No. 25-C

DECISION No. 5-D

Agrarian Docket No. 160. AMC Docket No. 57. Claimants: Henry H. Stephens, William Stephens and Hugh Stephens ("El Potrero"). Amount claimed: \$311,832.80. Amount awarded: \$47,183.50.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an

appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 50 dated September 23, 1944).

This claim, as originally filed with the Agrarian Claims Commission, was in the sum of \$212,858.80 and was predicated upon an alleged loss of claimants' entire property, namely 5,234 hectares. It was contended that 2,759.65 hectares had been expropriated by presidential decrees of June 26, 1931, August 13, 1935, and January 27, 1937; that 1,500 hectares had been leased by the Mexican Government to third parties in 1938, without any decree for expropriation or *ejidos*; and that the remainder of the property, which consists of 974.35 hectares and which the original claim inadvertently states as having an area of 874.35 hectares, had been overrun by squatters and agrarians who have taken possession of same. A sum of \$209,360 was claimed for the loss of the 5,234 hectares, or at the rate of \$40 per hectare. The remainder of the claim was for loss of personal property valued at \$1,498.80, and for legal expenses and fees allegedly amounting to \$2,000.

The original tract purchased by the three claimants, American citizens, as equal partners of the firm of Stephens Hermanos consisted of 6,664 hectares known as Hacienda El Potrero. It is situated in the Municipality of Acapulco, State of Guerrero, Mexico, and was acquired in 1900 for 6,000 pesos. Prior to the said expropriations, the original tract had been reduced in area to 5,234 hectares through sales by claimants of 980 hectares, and allegedly through the taking of 450 hectares in or about 1909 for coast defense by the Mexican Government. The claimants state that no claim is presented for the 450 hectares.

The evidence establishes that 2,759.65 hectares were definitively and finally expropriated by the presidential decrees referred to above. It was held in the appraisal of Commissioner Lawson that the only proper basis which had been established in this case for his consideration under the above-mentioned Agrarian Claims Agreement of 1938 was for the loss through the official expropriations under the three presidential decrees. He stated also:

"It is not alleged or proven that those expropriations resulted in damages to the remaining lands, nor is it established in a convincing manner that the claimants have lost possession of the unexpropriated area through action of the Mexican Government."

In arriving at his appraisal of the expropriated areas he employed the following classifications which were stated in the decrees:

Decrees	Humedad	Tillable	Pasture and other	Total
June 26, 1931.....		98	526.00	624.00
Aug. 13, 1935.....	57	.....	670.65	727.65
Jan. 27, 1937.....		352	1,056.00	1,408.00
	57	450	2,252.65	2,759.65

Commissioner Lawson declared the following values for the land as classified by him:

	<i>Pesos per hectare</i>
Humedad land	100
Tillable land	20
Pasture land	15

On the basis of the above-mentioned classification and values Commissioner Lawson appraised the claimants' losses at \$17,033.

The contentions of the petition for review are: (1) the evidence shows that the entire tract of 5,234 hectares was taken; (2) the evidence shows that a higher value should have been awarded per hectare for the three classes of land; (3) the appraisal disregards other evidence as to value of improvements, value and earning power; and (4) the appraisal fails to apply the rate of exchange as set up in section 7 of the Settlement of Mexican Claims Act of 1942. Although not specifically listed, the further contention is made that an allowance should have been made for personal property and legal expenses.

As to the first contention, the Commission finds that only 2,759.65 hectares of land were affected by the three presidential decrees, as follows:

	<i>Hectares</i>
June 26, 1931	624.00
Aug. 13, 1935	727.65
Jan. 27, 1937	1,408.00

There is no evidence that the balance of the tract was affected by any gubernatorial or presidential decree of expropriation, and no testimony which would justify the granting of an award therefor under the accepted principles of international law. Likewise, it has not been proved that the claimants have lost possession of the unexpropriated area through any action of the Mexican Government.

With respect to the second and third contentions it may be noted that two affidavits are submitted in support of the value placed upon the land by the claimants. One recites a value of 80 pesos per hectare and the other, 40 pesos. Reference is also made to an alleged report by Mexican agricultural experts, which, however, was not put in the evidence, and which purports to state that irrigable lands of this tract were valued at 180 pesos per hectare, non-irrigable at 60 pesos, and pasture land at 30 pesos per hectare. It appears from the evidence that prior to the expropriations the entire property was valued for fiscal purposes at 90,000 pesos or at the rate of less than 18 pesos per hectare. There is no evidence of a satisfactory nature with respect to the extent of the income derived from the property.

While the evidence as to value is not very satisfactory, the Commission finds it necessary as a result of its personal inspection of the lands to revise the classifications made thereof in the presidential decrees. It is of the opinion that 25 per cent of the entire tract consists of tillable land and the balance of pasture land; that the tillable land should be assessed at 120 pesos per hectare and the pasture land at 30 pesos per hectare. Upon the aforesaid basis at the rate of exchange applicable on the dates of the respective

expropriations, the expropriated land would have the following values:

<i>Decees</i>	<i>Tillable</i>	<i>Pasture</i>	<i>Total</i>	<i>Pesos</i>	<i>Rate of exchange</i>	<i>U.S. Cy.</i>
June 26, 1931.....	156	468	624	32,760	2.10	\$15,600.00
Aug. 13, 1935.....	181.91	545.74	727.65	38,201.40	3.55	10,760.96
Jan. 27, 1937.....	352	1,056	1,408	73,920	3.55	20,822.54
	689.91	2,069.74	2,759.65	144,881.40	.....	47,183.50

Claimants' fourth contention has been considered in the claim of *Horace W. Corbin*, Series B, Decision No. 3. It is sufficient to state that the appraisal was made in dollars and section 7 of the aforesaid Act of 1942 has no application.

With respect to the item for personal property the claimants have failed to prove that the same was included in the property expropriated or whether it was stolen. If the claim is that it was stolen, there is no evidence to show responsibility on the part of the Mexican Government for such theft. Nor is there any evidence as to the value of said personal property. The claimants have also failed to submit any proper evidence to establish the item of \$2,000 for expenses.

With respect to the so-called "new" claim it may be noted that on November 19, 1943, claimants' attorney notified the Commission that he intended to file a new claim herein in the event that the Commission declined to consider in connection with the said petition for review, the evidence "of informal and de facto taking of the property of claimants on the ground that such takings were not legal expropriations." He stated that the new claim would be based "on the fact that the property of claimants was ruined and its [*sic*] title nullified by reason of such informal taking over of their property, i. e., claiming recovery on new grounds *but based on the facts set up in the original claim.*" (*Italics supplied.*) However, no new claim was filed. The Commission, in arriving at its decision, has considered the entire record presented to the Agrarian Commission in connection with claimants' allegation of loss of other property or the loss of use thereof, but has concluded that the evidence in the record fails to warrant any award in favor of claimant therefor.

The following award is accordingly made: To Henry H. Stephens, William Stephens and Hugh Stephens the principal sum of \$47,183.50 with interest, from dates of expropriations as provided in section 7 of the Act aforesaid.

DECISION No. 13-C

Agrarian Docket No. 161. AMC Docket No. 56. Claimant: The Tachuite Land and Planting Co. Amount claimed: \$396,834.00. Award: \$6,760.00.

This claim, as originally filed with the Agrarian Claims Commission, alleged that claimant's entire property, namely, 858.84 hectares, had been lost. It was contended that 120 hectares were taken by actual expropriation and that the agrarians had taken possession of the balance of the property so that the claimant was forced to abandon the same. Claim was also made for anticipated

losses as a result of possible expropriations in the future. Claim was made for \$296,500 for the said 120 hectares and, in the alternative, demand was made for the sum of \$212,124 if it should be held that the claimant had been actually deprived of the entire 858.84 hectares.

The property owned by claimant consisted of 858.84 hectares of land located in the Municipality of Juchique de Ferrer, State of Veracruz, Mexico. This was part of a larger hacienda which was acquired in 1898 by the claimant, a Missouri corporation. The nationality of its directors and stockholders has been satisfactorily established.

While a small portion of the original hacienda had been sold, the records indicate that the area still owned by the company was 858.84 hectares, and for which the company had paid, according to the records of conveyances, some 6,000 pesos. The company alleges that its actual cost was \$5,000. It is further alleged that some \$200,000 had been expended on permanent improvements and that some 350,000 coffee trees were planted.

The evidence indicates that 120 hectares of this land was expropriated under a Presidential decree dated April 2, 1934. While there are allegations that all of the remainder of the land has been seized by agrarians, and other allegations that 100 hectares of land were taken in 1936 by the President of the Municipality of Juchique de Ferrer, there is no competent evidence in the record to support such allegations. An affidavit of the attorney for the claimant relied upon in this connection was based entirely on hearsay evidence.

It was held in the appraisal of Commissioner Lawson of the Agrarian Claims Commission that the only loss established was that of 120 hectares of land. The petition for review of the appraisal was granted. (Order No. 18, February 3, 1944.)

The record demonstrates that 120 hectares of land have been lost to the claimant by virtue of the Presidential decree of April 2, 1934. The newly submitted evidence justifies an appraisal of this area at the rate of 200 pesos per hectare. Although it appears that this property was affected by an earlier provisional decree, the evidence submitted does not warrant a finding that claimant was actually dispossessed as a result of such decree. Consequently no award can be made for deprivation of use of said property prior to the date of the Presidential decree of April 2, 1934.

The claimant has asked that damages be awarded for the entire hacienda. This is upon the theory that, although only 120 hectares were taken by official decree, the agrarians have actually overrun the entire property. However, an unauthorized trespass of land does not, in itself, give rise to a claim. The Agrarian Claims Commission's authority was limited to claims for lands officially expropriated.

The claimant has further contended that the conversion of the award valued in pesos into dollars should be at the rate of \$0.4985, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, instead of the rate of exchange that existed at the time of expropriation. This contention has been considered

in the claim of *Horace W. Corbin*, Series B, Decision No. 3. It is sufficient to say that the appraisal was made in dollars and section 7 has no application.

With the petition for review, claimant has filed additional evidence, part of which presents facts as to a provisional expropriation decree dated in 1943. The theory of the claimant as to this item is twofold. It is contended that this evidence is presented not as a new expropriation, but as evidence of a former *de facto* taking of property. There is no merit to this contention, as above pointed out. Moreover the evidence cannot be received as either a new claim, or as a new item of claim, because of lack of jurisdiction. Provisional decrees do not constitute grounds for matured claims for the expropriation of property, although the actual taking of private property under a provisional decree issued prior to October 6, 1940, may properly form the basis of a claim for deprivation of the use of the property affected thereby. This Commission, by the terms of the Act creating it, *supra*, does not have jurisdiction of any losses accruing after October 6, 1940.

The loss sustained by the claimant resulting from the expropriation of 120 hectares is, therefore, appraised on the basis of a valuation of 200 pesos per hectare, a total of 24,000 pesos. The rate of exchange applicable on the date of the expropriation, April 2, 1934, was 3.55 x 1.

Accordingly, The Tacahuite Land and Planting Co. is awarded the sum of \$6,760.00 with interest, as provided in section 7 of the aforesaid Act, from April 2, 1934.

DECISION No. 3-C

DECISION No. 3-E

Agrarian Docket No. 178. AMC Docket No. 35. Claimant: International Land and Livestock Company. Amount claimed: \$4,672,207.92. Amount awarded: \$228,196.00.

This claim is before the Commission pursuant to the provisions of section 4(d) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938, and a review of that appraisal having been granted by this Commission (Order No. 16, dated January 13, 1944).

It was alleged in the claim presented to the Agrarian Claims Commission that the entire hacienda de Corrales y Anexas, situated in the District of Jiminez, State of Chihuahua, contained 362,000 acres and had a value of \$3,604,000.00, for which amount claim was made, less the sum of \$417,348.00, the alleged value of 5,975 hectares expropriated from the property under a decree of the President of Mexico dated October 23, 1924, and with respect to which a claim was presented to the General Claims Commission, United States and Mexico. The total amount claimed before the Agrarian Claims Commission was, therefore, \$3,186,652.00, the alleged value of the area remaining after the expropriation of 1924.

As a basis of its claim before the latter-mentioned Commission the claimant relied upon four agrarian decrees issued during the years 1934, 1935 and 1938, under which a total of 8,672.58 hectares were expropriated from the property, and upon an *acuerdo*

dated July 6, 1935, issued by the Mexican Department of Agriculture declaring all of the remaining lands of the hacienda de Corrales susceptible of colonization.

Only the above mentioned area of 8,672.58 hectares was appraised by the American Commissioner designated pursuant to the Agrarian Claims Agreement of 1938, he having concluded that the portion of that claim based upon the *acuerdo* of July 6, 1935, did not come within the jurisdiction of that Commission.

In its petition for a review of that appraisal the claimant states that while it does not agree with the Commissioner's exclusion of the portion of that claim based upon the *acuerdo* of July 6, 1935, it is unnecessary to press the point since by a decree issued by the President of Mexico on August 7, 1940, all the remaining land of the hacienda de Corrales was expropriated.

The jurisdiction of the Agrarian Claims Commission established under the Agrarian Claims Agreement of 1938, did not extend to claims arising subsequent to July 31, 1939. The claimant, apparently entertaining some doubt with respect to the authority of this Commission to consider in connection with its petition for review the portion of its claim based upon the *acuerdo* of July 6, 1935, has also presented to this Commission a new claim predicated upon the above-mentioned Presidential decree of August 7, 1940, whereby all the remaining portion of the hacienda de Corrales was expropriated. Claimant points out that the new claim is filed.

"only in the event that the Commission declines to consider said last mentioned Presidential Decree as constituting a taking cognizable under the original claim because of its promulgation after the filing of the original claim."

We do not consider that the petition for review, in so far as it is based upon the failure of the American Commissioner designated under the Agrarian Claims Agreement of 1938 to appraise the portion of the claim based upon the *acuerdo* of July 6, 1935, to be well founded. That *acuerdo* did not, in our opinion, give rise to a claim of the character which the Agrarian Claims Commission was authorized to consider. It follows, therefore, that the claimant could obtain no advantage with respect to that portion of the claim solely by a review of that appraisal by this Commission.

We think that claimant's new claim, based upon the Presidential decree of August 7, 1940, is within the jurisdiction of this Commission as defined in paragraph (4) of section 3(a) of the Settlement of Mexican Claims Act of 1942.

In view of the manner in which the petition for review and new claim have been presented, as noted above, the Commission considers it is appropriate and desirable to dispose of both in a single decision particularly since both relate to different portions of the same tract of land.

It seems unnecessary to state that, a petition for review having been granted, the Commission should examine the entire record with a view to determining not only the merits of the petition but the question as to the correctness of the previous appraisal in general.

Aside from its objection to the exclusion from the American

Commissioner's appraisal of the portion of its claim predicated upon the *acuerdo* of July 6, 1935, the principal grounds advanced by claimant as a basis for a review of the previous appraisal made of its claim appear to relate to certain observations made by the American Commissioner regarding the fiscal value of the hacienda de Corrales, its area, and to the rate of exchange applied by the American Commissioner in converting pesos into U. S. currency.

With regard to the latter-mentioned ground of complaint, the Commission considers it to be without merit. Land values in Mexico are naturally and properly expressed in terms of pesos, the medium of exchange in that country. We find no impropriety in the action of the American Commissioner in determining the value of claimant's lands in terms of the currency of Mexico and in converting the result of such determination into U. S. currency at the official rate of exchange obtaining on the date of the loss. The indemnity to be paid by Mexico under the Agrarian Claims Agreement of 1938 was required to be paid in American currency and we consider that the conversion of peso values into American currency was a proper function of the Commissioners appointed pursuant to that Agreement. We know of no proper basis for such conversion other than at the rate of exchange applicable on the date of loss.

As clearly stated in section 7 of the Settlement of Mexican Claims Act of 1942, the rate of exchange of \$0.4985 is applicable *only* to appraisals made in Mexican currency. No appraisals made by the American Commissioner under the Agrarian Claims Agreement of 1938 were in terms of such currency and that provision of the 1942 Act is therefore wholly inapplicable to the instant claim.

We accordingly conclude that claimant's position with respect to this point is not well taken.

Regarding the area of the hacienda de Corrales y Anexas, the following observations may be made.

Claimant evidently relies in the main upon the affidavit of William Techow in support of its statement that the property contains a total area 362,000 acres, equivalent to 146,559 hectares. While Mr. Techow states in his affidavit of June 16, 1939, that he visited the property in 1927, 1932 and 1934, and made a thorough inspection thereof, he does not state that he actually surveyed it. He states that the property contains "*approximately*" 362,000 acres. The method whereby Mr. Techow arrived at the "*approximation*" is not disclosed beyond the fact that he "*inspected*" the property. It is obvious that an area of that size could not be accurately determined short of an actual survey.

The deed whereby the claimant acquired the property in 1906, mentions four different tracts of land with a total area of 151,909 hectares. Since the claimant appears to have acquired only a *ten-twelfths* interest in one of those tracts known as the hacienda de San Antonio de Zapata, said to contain an area of 1,755 hectares, the total area of 151,909 hectares would seemingly have to be reduced by 292 hectares. And since it further appears that the area of the ranch known as *San Jose* (5,571 hectares) was counted *twice* in arriving at the total area of 151,909, that area

should apparently also be deducted, making a total deduction of 5,863 hectares. In other words, it appears from the deed that the area actually acquired by the claimant was not in excess of 146,046 hectares and from other evidence before the Commission, it seems probable that the area actually acquired was even less. For example, information obtained from the Mexican tax office in Chihuahua City in February 1944, shows that the property as manifested with that office for tax purposes, had an original area of 144,573 hectares. Again, Annex 12 to the Memorial filed in support of a claim on behalf of the claimant with the General Claims Commission, United States and Mexico (Docket No. 1365), is a blueprint of the hacienda de Corrales y Anexas signed by Ing. Jose Munoz Salas, showing the total area to be 144,623 hectares, or 50 hectares more than the area shown by the tax office in Chihuahua City.

It is of course the duty of claimants to support important allegations made with respect to claims of this character with clear and convincing documentary evidence. In the absence of such evidence the Commission is obliged to reach its conclusions on the basis of such evidence as is available to it. In the present case, the Commission is constrained to accept the area shown by the above mentioned blueprint as the original area of the property acquired by the claimant, namely, 144,623 hectares.

With respect to the value of the property at the time of the several expropriations, the record contains little evidence of a satisfactory nature. The original purchase price of 400,000 pesos included farming equipment, an unstated number of livestock of various classes, personal property, etc., the value of which is not disclosed. The property is represented as being a well stocked and well equipped ranch at the time of its acquisition by the claimant in 1906. Presumably a substantial portion of the purchase price of 400,000 pesos was represented by other than land value. The property doubtless sustained substantial loss and damage during the revolutionary period, 1910-1920, and it is not clearly disclosed to what extent it was operated thereafter. No information or evidence is furnished in the way of actual records to establish the earning capacity or productivity of the property at any time.

From the Commission's inspection of the property in February 1944, it is of the opinion that there is lacking substantial support for the values and classifications of land furnished by Messrs. Techow and Martineau.

Prior to the Presidential decree of August 7, 1940, the property had been affected by the following decrees of expropriation:

Date	Irrigated	Irrigable	Temporal	Pasture	Total
Oct. 23, 1924.....	1,215	.....	2,430	2,330	5,975
Nov. 5, 1935.....	.....	275.58	.....	2,550	2,825.58
Do.....	.....	352	.....	2,640	2,992
Apr. 2, 1934.....	205	.....	.....	.....	205
Oct. 5, 1938.....	.....	.....	.....	2,650	2,650
	1,420	627.58	2,430	10,170	14,647.58

In referring to the above-mentioned expropriations, the claimant, on page 28 of its original affidavit of claim, stated that they included "all the irrigated lands" of the hacienda de Corrales y Anexas.

Records of the tax office in Chihuahua City indicate that the extent of the irrigated and irrigable land on the property was 1,694 hectares.

Since the claim with reference to the expropriation of 5,975 hectares on October 23, 1924, has previously been appraised and the appraisal accepted by the claimant, the present claim relates only to the remaining area of the property, namely, 138,648 hectares.

On the basis of the entire record the Commission classifies and values that area as follows:

205.00 hectares of irrigated land at 250 pesos per hectare
627.58 hectares of irrigable land at 250 pesos per hectare
137,815.42 hectares of pasture land at 6 pesos per hectare

138,648

The areas and classifications of land corresponding to the several dates of expropriation are as follows:

Date of expropriation	Irrigated	Irrigable	Pasture	Total
Apr. 2, 1934.....	205	.....	.....	205
Nov. 5, 1935.....	.....	627.58	5,190	5,817.58
Oct. 4, 1938.....	.....	.....	2,650	2,650
Aug. 7, 1940.....	.....	.....	129,975.42	129,975.42
	205	627.58	137,815.42	138,648

Application of the above-mentioned values to the areas expropriated on the respective dates results, in round numbers, in the following appraisal in U. S. currency:

Date	Pesos	Rate of exchange	U. S. currency
Apr. 2, 1934.....	51,250	3.55 x 1	\$14,437
Nov. 5, 1935.....	188,035	3.55 x 1	52,968
Oct. 4, 1938.....	15,900	4.90 x 1	3,245
Aug. 7, 1940.....	779,852	4.95 x 1	157,546
			228,196

An award is accordingly made in favor of the claimant in the total amount of \$228,196.00, with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 37-C

Agrarian Docket No. 179. Claimant: Charles P. Reiniger. Amount claimed: \$143,886.97. Amount awarded: \$10,338.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938, and a review of that appraisal having been granted by this Commission (Order No. 27 dated May 24, 1944).

The claim arises out of the expropriation of 3,670 hectares of land situated in the Municipality of Ascensión, District of Galeana, State of Chihuahua, Mexico, under a Presidential decree of December 1, 1937. The expropriated area was a portion of a larger tract containing in excess of 21,000 acres which had been acquired in 1914 by the Mexico-American Land Company, S. A., a Mexican company of which the claimant, an American citizen, owned practically all of the stock.

The claim presented to the Agrarian Claims Commission in the amount of \$143,886.97, included the following items:

26,915.82 acres of land at \$5.00 an acre.....	\$134,579.10
Taxes paid on the property	2,724.06
Miscellaneous expenses	6,583.81
	143,886.97

It was alleged in that connection that the expropriation of 3,670 hectares of land from the property in 1937 had destroyed claimant's investment in the entire tract.

Evidence presented to the Agrarian Claims Commission indicated that the claimant, in September 1934, executed a power of attorney in favor of one Willis S. Hunt authorizing the latter to dispose of all the land owned by the Mexico-American Land Company, S. A., and that Hunt, in February 1935, in pursuance of that authority, executed a deed covering said property to a Mexican citizen named Melendez, who recorded same in Mexico. Claimant contended that Hunt had acted fraudulently and without proper authorization in consummating the sale of the property.

Various documents executed in 1939 were presented to the Agrarian Claims Commission in corroboration of claimant's contention. These documents included an affidavit by Hunt stating that Melendez had paid no consideration in connection with the purported sale of the property; a contract between the claimant, Melendez and Hunt whereby Melendez reconveyed to the Mexico-American Land Company, S. A., any interest he might have in said property; a deed executed by Hunt to that company in which he quitclaimed any rights he had in the property and an agreement between Hunt and claimant for the rescission of the power of attorney given to Hunt in 1934.

The American Commissioner was of the opinion that the evidence presented failed to establish that the claimant was the owner of the property at the time of the expropriation in 1937, or that claimant's interest in the Mexico-American Land Company, S. A., was satisfactorily proven. He accordingly considered that the claim should be disallowed.

Claimant's petition for review of that appraisal challenges the correctness of both of those findings by the American Commissioner.

On June 29, 1944 this Commission authorized the filing of additional evidence under the provisions of section 4(d) of the Settlement of Mexican Claims Act of 1942. This evidence together with that previously contained in the record satisfies the Commission that the purported sale of the property in 1934 was without legal effect and that title thereto at all times pertinent to this claim was

held by the Mexico-American Land Company, S. A. The Commission is also convinced that the evidence which has been presented leaves no doubt that the claimant was the sole owner of all the stock of that company.

There remains for consideration the extent of the indemnity to which the claimant is entitled. Allegations to the effect that the expropriation of 3,670 hectares of land from the property in 1937 rendered the remaining lands without value are not supported by evidence. Neither is it shown that such expropriation had the effect of reducing in value the unexpropriated land. There is therefore no proper basis for computing damages except with reference to the area expropriated.

Two affidavits are furnished in which values of \$10 per acre and \$12 per acre, respectively, are placed upon the property. No evidence is adduced bearing upon the income derived from the land at any time. The area expropriated is described in the decree as pasture land. Upon the entire record, the Commission considers that the fair and reasonable value of the 3,670 hectares expropriated is 36,700 pesos, equivalent in United States currency at the rate of exchange (3.55 x 1) applicable on the date of expropriation, to \$10,338.00.

The other items of claim to which reference is made above, namely, taxes paid on the property and miscellaneous expenses, are found to be without basis and no allowance is made therefor.

Claimant is accordingly awarded the sum of \$10,338 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from December 1, 1937.

DECISION No. 30-C

Agrarian Docket No. 187. Claimant: Charles A. Wayland. Amount claimed: \$50,217.07. Amount awarded: \$26,142.00.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 31 dated June 6, 1944).

The claimant seeks to be indemnified in the amount of \$50,217.07. The claim is predicated upon losses resulting from the alleged expropriation of 554 hectares of claimant's land located in the Santa Teresa de la Concordia Ranch, in the District of Hermosillo, State of Sonora, Mexico, under a Presidential decree dated July 21, 1937. The said decree, however, expropriated only 464 hectares and the State of Sonora and associates were referred to therein as the owners of the property.

It appears that on February 8, 1913 the claimant together with John S. Sanders, James Sutherland and J. C. Sutherland entered into a purchase agreement with one H. A. Smith and others whereby the latter agreed to sell to said purchasers the above-mentioned ranch containing 6,500 hectares, and 121 hectares of the ranch known as El Hueco de los Palos Blancos for the price of \$44,992.75. On August 1, 1913 a deed of conveyance was executed

and the said purchasers acquired thereby joint ownership of the aforementioned land.

On February 12, 1915 the grantees executed a partition deed conveying 1,653 hectares to John S. Sanders, and the balance of 4,968 hectares to claimant, James Sutherland and J. C. Sutherland.

By the terms of the will of James Sutherland who died on July 2, 1916, all of his estate passed to his widow, Eliza Ann Sutherland, including his one-third interest in said 4,968 hectares. By a deed of March 1, 1922 she conveyed the said one-third interest to her son, J. C. Sutherland, who thereupon became owner of two-thirds of the said area of 4,968 hectares. J. C. Sutherland conveyed all his interest in said properties to Charles A. Wayland, the claimant, by a deed of December 9, 1930. The claimant thus became the grantee of the 4,968 hectares, though the deeds to the last two conveyances have not been protocolized in Mexico.

When first purchased the land was almost entirely unimproved. Improvements, such as clearing, checking and leveling the land, and constructing lateral canals and fences, cost approximately 43,470 pesos. The expropriated portion was productive of wheat, beans and corn, averaging 400 tons annually from 1932 to 1937. Damages of 110,800 pesos are asked for the value of the 554 hectares alleged to have been expropriated. This is at the rate of 200 pesos per hectare. Twenty thousand pesos are also claimed for the damage to the unexpropriated property by reason of its being cut off from the water supply. An aggregate sum of 174,270 pesos is thus asked for (a) value of expropriated land, (b) damages to unexpropriated land and (c) value of improvements. In addition thereto, claimant seeks \$1,060.73 for attorney's fees, trips and incidental expenses incurred in the expropriation proceedings.

Commissioner Lawson held the evidence insufficient to establish claimant's ownership of the 464 expropriated hectares in view of the statement in the Presidential decree to the effect that the affected property belonged to the State of Sonora and associates. He also held that the evidence before him failed to show whether the said 464 hectares were a part of the 1,653 hectares partitioned to John S. Sanders in 1915, or whether they were a part of the 4,968 hectares in which claimant and the Sutherlands retained an undivided interest after the partition, but that, in the event it were established that the expropriation affected the 4,968 hectares tract, the interest in any claim therefor could not exceed a one-third interest. This conclusion was apparently based on the fact that the aforesaid deeds of 1922 and 1930 had not been recorded. These conveyances affected two-thirds of the 4,968 hectares area.

The petition for review contends that Commissioner Lawson committed errors of law and fact. It contains no specifications of error and is in fact an application for the filing of new evidence which accompanied the petition. Leave to file this evidence and other evidence offered thereafter was granted by this Commission as to those exhibits which were admissible, pursuant to section 4(d) of the Act aforesaid.

While the record before Commissioner Lawson did not establish whether the 464 hectares in question were part of the 1,653 hec-

tares partitioned to John S. Sanders or of the remaining 4,968 hectares belonging to the claimant, it now appears satisfactorily shown that they were expropriated from claimant's property in accordance with the Presidential decree of July 21, 1937. We also find that claimant properly succeeded to the undivided one-third interest of James Sutherland and J. C. Sutherland by virtue of the two deeds above mentioned.

It is true, according to Mexican law, that since the deed of 1922 from Eliza Ann Sutherland to J. C. Sutherland and the deed of 1930 from the latter to the claimant were not recorded prior to the Presidential decree of July 21, 1937, they could not be registered or recorded thereafter. (Agrarian Law, Article 81) However, legal title to the land in question had been conveyed to claimant prior to the expropriation and claimant thereby became the owner as against all former owners thereof. The claimant's ownership is established beyond any doubt by new evidence in the form of a certificate of December 14, 1943 by the Chief of the Agrarian Department of the State of Sonora (Exhibits 11, 11-a) wherein it is stated that the 464 hectares in question are located entirely within the legal confines of the southwest part of the Santa Teresa tract and that they belong to Dr. Charles A. Wayland and that the Government of the State of Sonora and associates, who appear as the co-owners of the suburbs of said tract, do not have and did not have any legal interest therein. This is confirmed by another official certificate dated January 7, 1944 (Exhibit 9-a).

An official certificate dated December 31, 1943 of the Sonora Department of Agriculture and Public Works states that this property is located outside of the prohibited zone of 50 kilometers from the coast of the Gulf of Lower California (Exhibits 12, 12-a). The taxes on this property have been fully paid by the claimant to and beyond the date of expropriation (Exhibit 13). A certificate of January 7, 1944 by the Municipal President of Hermosillo, State of Sonora (Exhibits 9, 9-a) states that "the tract 'Santa Teresa de la Concordia' under the ownership of the North American Charles A. Wayland . . . is found to have been under operation for more than twenty years last past," i. e., prior to January 7, 1944, and that it "is one of the most important in the region."

From all of the foregoing we conclude that claimant was the sole owner of the said expropriated 464 hectares and that he is entitled to compensation therefor.

The evidence shows that the expropriated 464 hectares with water rights had a value of 200 pesos per hectare. This amounts to 92,800 pesos for the said expropriated tract. This sum converted at the rate of exchange (0.2817) applicable at the date of expropriation (July 21, 1937) is equivalent in round numbers to \$26,142.00.

No allowance is made for the item of damage to the unexpropriated area. The evidence offered in support thereof is insufficient and unsatisfactory. With respect to the item for value of improvements, the Commission considers that the award herein for the value of the expropriated land embraces such improve-

ments as were made thereon. The expenses item is disallowed. International tribunals have generally disallowed legal expenses allegedly incurred incident to a claim of expropriation.

Claimant, Charles A. Wayland, is, therefore, awarded the principal sum of \$26,142.00 with interest, as provided in section 7 of the Act aforesaid, from July 21, 1937.

DECISION No. 12-C

Agrarian Docket No. 188. Claimant: Ida B. Legerts. Amount claimed: \$7,587.50. Amount awarded: \$7,587.50.

This is a claim to be indemnified in the sum of \$7,587.50 and is based upon losses resulting from the expropriation of 213 hectares of land forming a part of a tract known as Porción 41, located in the Municipality of Gómez Farias, State of Tamaulipas, Mexico, under a Presidential decree of October 20, 1937.

On July 6, 1915, claimant, an American citizen, acquired from the Tampico Cattle and Agricultural Company 680 hectares of land know and located as above described, near the town of Xicontencatl and "El Mante," the latter being a sugar manufactory, and near the railroad station of Limon. The Pan American highway crosses the property. The purchase price was about \$2,000. The property has been in a dilapidated condition since its abandonment in 1911, but claimant made certain improvements thereon after her acquisition of same amounting to \$5,587.50.

The evidence further shows that from 1922 to 1930, part of the land was rented under share-crop leases providing for a rental of five percent of the harvest. In 1922, 20 hectares were planted in sugar cane which yielded \$50 net per hectare. Several affidavits are furnished showing a value of \$100 per hectare: others are presented showing a higher or lesser value.

The community of Rincón Antonio petitioned for ejidos on August 5, 1936, and provisional dotation was granted by the Governor on May 25, 1937, covering 213 hectares in Porción 41. The Presidential decree was issued on October 20, 1937, for the same number of hectares.

Commissioner Lawson considered that it seemed probable that some of the land was of good quality, but that a considerable part was in a deteriorated condition at the time of expropriation. He regarded the expropriated area as having a value of 40 pesos per hectare and appraised the claim accordingly.

The petition for review sets forth the impossibility of obtaining and presenting sufficient evidence in 1939, due to conditions then prevailing in Tamaulipas; and petitioner filed with said petition an application for permission to present further evidence theretofore unobtainable. The petition and the application were granted by this Commission under Order No. 14, dated January 6, 1944, as to the former, and by permission under same date, as to the latter.

It is the opinion of this Commission that from all the evidence adduced the expropriated area has a greater value than that set forth in Commissioner Lawson's appraisal. The evidence establishes that claimant's land had been partly under cultivation,

either by herself or tenants, and that its productivity in cane sugar showed some earnings. Its facilities for transportation enhanced its value, as did also the improvements made thereon by claimant. As the best land was expropriated, the remaining hillside land was rendered valueless to claimant after the expropriation.

These considerations lead the Commission to regard the losses and damages suffered by reason of the expropriation as being the amount of \$7,587.50 as claimed.

An award is, therefore, made in favor of the claimant in the sum of \$7,587.50 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from October 20, 1937.

DECISION No. 34-C

Agrarian Docket No. 195. Claimant: Mexico Land and Live Stock Company. Amount claimed: \$65,756.00. Amount awarded: \$33,780.28.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 28 dated May 27, 1944).

The claim, in the sum of \$65,756, is predicated upon losses allegedly sustained as the result of the expropriation of 688 hectares of land of the Mexico Land and Live Stock Company, hereinafter referred to as the company, comprising a portion of the Hacienda Santa Fe, situated in the Municipality of Pueblo Viejo, State of Veracruz, Mexico, under a Presidential decree dated April 1, 1936. The petition for the property was published January 12, 1926.

The evidence submitted in the claim of *James A. Moseley*, Agrarian Docket No. 65, is relied upon by claimant in support of the present claim.

The company, an Arizona corporation, acquired title to the hacienda, consisting of about 2,042 hectares, by purchase for a consideration of 50,000 pesos from Doña Lola González, who executed a deed to the property on April 14, 1908.

On November 22, 1932, Robert Thomas on behalf of the company executed a deed to Dora Martinez, a Mexican citizen. She has married and now bears the name of Dora Martinez de Lopez. The deed purported to convey for a stated consideration of 8,000 pesos that portion of the hacienda which had not already been expropriated and which comprised the land involved in this claim.

At the annual meeting of the stockholders of the company, held on March 1, 1932, it was decided that the company should be liquidated and that for this purpose all the stock should be in the name of the president, the said Robert Thomas. The charter of the company expired in 1933. On July 6, 1939, Thomas, purporting to act as liquidator of the company, executed a general power of attorney in favor of one James A. Moseley authorizing the latter to prosecute any actions and claims the company might have. In the same instrument Thomas ceded in favor of Moseley "in

compensation for the fulfilment of this mandate" 75 percent of any sum which might be realized as a result of any such actions.

Commissioner Lawson found that by the aforesaid deed of November 22, 1932, claimant had disposed of all interest in the property in question.

The petition for review contends as follows:

1. That the deed of 1932 was a nullity under the Mexican Agrarian Code which makes ineffective in agrarian matters any changes in the ownership of property, diminishing the area of same subsequent to the publication of agrarian petitions affecting such property; and that the petition for the property which was granted by the 1936 decree, having been published on January 12, 1926, which was anterior to the date of the deed purporting to diminish the property, the property taken in 1936 remained the property of the company.

2. That the true consideration for the deed of 1932 was not the stated cash consideration; that Dora Martinez, as purchaser, was acting not on her own behalf in that transaction but as a "dummy" for the benefit of American creditors of the claimant company, to whom, under restrictions of Mexican law prescribing foreign ownership of lands in this area, the company was unable to convey the property directly.

3. That the instant claim should be regarded "as exclusively a claim on behalf of the company, subject only to such allowance as may be made by the Commission, upon application of the interested parties, for the services performed by Mr. Moseley as attorney," and that the inclusion of Moseley as a claimant along with the company by Commissioner Lawson was error since Moseley had a power of attorney and a right to only 75 percent of the proceeds of any claims of Robert Thomas, personally, or as liquidator of the company.

With respect to the first two contentions: The attempt of claimant company to convey its land by the deed of 1932 was ineffectual because in violation of the controlling Mexican law (Article 28, Chapter V of Law amending that of dotations and restitutions of lands and waters of April 23, 1927 regulating article 27 of the Constitution, *Diario Oficial* of August 18, 1927). Thus the property taken in 1936 was in fact that of the claimant company since in legal contemplation claimant had never parted with title thereto. The expropriation decree of 1936 refers to claimant as owner of the property. Furthermore, Dora Martinez de Lopez in an affidavit dated March 17, 1944, states that neither she nor anyone on her behalf paid any consideration for the attempted conveyance in 1932. This affidavit was received as additional evidence by the Commission and was not before Commissioner Lawson.

As to the third contention, the Commission holds that the claim must be regarded as that of the company in view of an agreement of December 30, 1943 between Laura Blanche Moseley, as administratrix of the estate of James A. Moseley, and J. C. Stribling, J. M. Moody, W. M. Hudson, Mrs. Robert Thomas and Robert Thomas, Jr. (Exhibit 3-a, to additional evidence), by which Mrs. Moseley assigned to the other parties, as stockholders of claimant

company, a 25 percent interest in the award made in the aforesaid claim of *James A. Moseley* and also quit-claimed to the other parties and all right which the Moseley estate, or she, as administratrix thereof, might have in any other claim of the company or its stockholders, against the Mexican Government. This agreement was not before Commissioner Lawson. For the reasons stated, the Commission holds that the claimant company is the proper party to make claim here.

With respect to the value of the expropriated land, it should be noted that the expropriation decree of 1936 classified the property as 552 hectares of temporal land and 136 hectares of *agostadero y monte* (pasture and brush). Two Mexican engineers say that at the time of the expropriation the property was in full production and that each hectare of land could produce "an average two to three tons of corn per hectare, and there are two crops per year." They ascribe values of 221 pesos per hectare to the 552 hectares of temporal land and 70 pesos per hectare to the remaining 136 hectares. The claimant adopts these values (Exhibit 7-A to *Moseley* claim). Statements by two Mexican farmers corroborate the productive capacity of claimant's land (Exhibit 7-B to *Moseley* claim). Commissioner Lawson allowed for the part of the Hacienda Santa Fe involved in the *Moseley* claim similar in its agricultural characteristics to the temporal land of 552 hectares, the sum of 200 pesos per hectare. We find this to be a fair valuation and apply the same to the 552 hectares of land in this claim. For the remaining land claimant seeks the sum of 70 pesos per hectare. The testimony in the record in our opinion fully supports such a valuation.

At the rate of 200 pesos per hectare the 552 hectares had a value of 110,400 pesos. This sum converted at the rate of exchange (3.55×1) prevailing on the date of the expropriation (April 1, 1936) is equivalent to \$31,098.59. The value of the 136 hectares of land, at the rate of 70 pesos per hectare, was 9,520 pesos. This sum is equivalent to \$2,681.69 at the said rate of exchange.

Accordingly, the claimant, Mexico Land and Live Stock Company, is awarded \$33,780.28 with interest, as provided in section 7 of the Act aforesaid, from April 1, 1936.

An application having been made by Edgar Turlington of Washington, D. C., attorney for claimant, pursuant to section 5 (c) of the Act aforesaid, for determination and apportionment by the Commission of his fees for services rendered with respect to this claim, which application is supported by the written consent of claimant's stockholders to the payment of attorney's fees to him in the amount of 15 percentum of the net amount recovered by the claimant, the Commission finds upon the entire record that the amount requested for legal services is just and reasonable and, accordingly, awards to Edgar Turlington 15 percentum of the aforesaid award to claimant.

DECISION No. 6-C

Agrarian Docket No. 203. Claimant: Helen Swift Morris Neilson, Nelson Swift Morris, Edward Morris and Ruth Morris Bakwin, as Trustees of the Estate of Edward Morris, Deceased. Amount claimed: \$1,298,417.14. Amount awarded \$449,993.00.

This claim, in the amount of \$1,298,417.14, was originally filed with the Agrarian Claims Commission and was predicated upon losses allegedly resulting from the expropriation of 461,079 hectares of land comprising the major portion of a cattle ranch located in Chihuahua, Mexico. The ranch consisted of 500,996 hectares of land, according to the conveyances of deed. It was purchased in 1910 by the claimants' decedent, Edward Morris, for a consideration of \$525,000, it being an established and going concern. The purchaser improved the quantity and quality of the cattle and invested a considerable sum in improvements, largely water reservoirs and additional wells. Shortly after the purchase there was military activity during the revolutionary period between 1910-1920, resulting in loss for which the Special Mexican Claims Commission made an allowance. There is no evidence to establish that there had been any rehabilitation of the property after that date.

The claimants have asked for damages for the total value of the property, such losses being predicated upon (1) nullification of title of 393,623 hectares of land in 1924, this portion of the land being known as the Tercera Zona, (2) expropriation of 67,456 hectares by seven decrees hereinafter specifically referred to, during the period of 1929-1938, inclusive, and (3) destruction of the value of the balance of the land, 39,917 hectares, by reason of the nullification and expropriation, i.e. severance damage. There are also three additional items of claim, namely: legal services, \$52,615.42; cost of survey \$12,000.00; and taxes, \$39,901.72.

In appraising the claim Commissioner Lawson disallowed any loss for the Tercera Zona on the theory that the nullification of title for that portion of the property had occurred in 1924, i.e. prior to August 30, 1927, and therefore was without the jurisdiction of the Agrarian Claims Commission. He disallowed the last three items of claim, that is, for legal services, cost of survey, and taxes, on the ground that they were not proper items of claim. For the loss caused by the seven decrees of expropriation he fixed the values so that the damages amounted to \$72,263.00.

The claimants filed a petition for review contending that the Agrarian Claims Commission had jurisdiction; that the various allowances for the losses on which awards were made were too low to do justice to claimants; that the severance damage on the remainder of the property should have been allowed; and that the value should not have been fixed in pesos and then computed at the current rate of exchange but should have been made in dollars or, if not, the computation of pesos into dollars should have been made at the rate of 0.4985 as provided by the Settlement of Mexican Claims Act of 1942.

This Commission granted the petition for review of the appraisal. Order No. 8, November 24, 1943. As a result the case is considered on the entire record.

The first item of claim, that of the Tercera Zona, is predicated upon a decree of nullification issued by the President of Mexico in 1924. It appears from the record that this portion of the ranch was part of an award for services granted to one Valenzuela and his associates for certain services performed for the

Republic of Mexico and for which services nearly three million hectares of land were granted from the public domain, such grants being in various amounts during a period from 1883 to 1887, inclusive. The decree of nullification stated that the services had not been performed although the original grants were independent of any such condition. There was no notification given to the owners of the property. Furthermore, the claimants' rights, under all the circumstances involved, would not be affected by service upon them of the decree of 1924 and subsequent decrees based thereon. The decree provided that the government could acknowledge, "through equity, when in its opinion it is desirable," the title of Valenzuela's grantees. It provided further that within a limited time said grantees should be required to file a petition asking that their title be confirmed. The period of time within which such petition was required to be filed was extended by various decrees and was finally extended by the last decree to April 2, 1931. The fact that the claimants have not alleged that a petition for recognition of title was filed by them does not alter the situation. By the time the period for such filing had lapsed, it was evident from the other circumstances that their title would not be recognized regardless of the showing. Under the convention of September 8, 1923, between the United States and Mexico, exhaustion of local remedies need not be proved. Furthermore, regardless of such provision in the convention, resort to local remedies is not necessary when, as in this case, such resort would not afford any relief.

During 1925 a provisional decree of expropriation, issued by the governor of a province, covered part of the Tercera Zona. The representatives of claimants' decedent protested such decree and, as a result of several meetings, it was set aside. The decree and the agreement specifically recognized the title of the property to be with Morris. The terms of the agreement were set out in a letter by an attorney for the Morris interests and were acceded to by several Mexican officials, including the President and Secretary of Agriculture and Fomento.

This Commission as a result of the evidence filed herein, holds that the decree of nullification did not declare, as a matter of law, the title to the Tercera Zona as void but merely voidable, and that, in the circumstances of this case, the title would not become void until the lapse of time provided for the filing of a petition for recognition of title, which lapse occurred on April 2, 1931. We, therefore, hold that the loss of the property comes within the jurisdiction of the Agrarian Claims Commission and consequently of this Commission and that the claimants herein are entitled to an award for such loss.

Commissioner Lawson properly allowed damages for the expropriation of 67,456 hectares of land. Such losses will be listed in the amounts as to area and as of the dates provided in the appraisal of Commissioner Lawson.

The claimants have also asked for severance damage for 39,917 hectares of land. The evidence as to such losses would not justify an award for the amount claimed. This property, doubtless, had lost some of its value because it had been used for

cattle raising and the property that had been taken from the claimants included most, if not all, the water supply. This must have caused a considerable depreciation in the value of the remainder of the property. A careful consideration of the evidence submitted indicates that such loss may be fixed as fifty percent of the value of such land. It would seem clear that the land that was not taken by way of decree of nullification or by the seven decrees of expropriation was the least valuable of such land. Some of this land had a very low value, it being mountainous, without sufficient rainfall, and of no great value even for grazing. A Mexican engineer who made an examination of the property indicates that a great deal of this property had a value of 0.3 pesos per hectare. There is corroborative testimony that this was a fair valuation. This would fix the total value for the remainder of the property as 11,975.1 pesos. It being impossible to determine a definite date for such loss, it would seem fair to date the same from the time of the loss of the greatest part of the land, namely, April 2, 1931. At that time the rate of exchange was 2.10 x 1. Computation at fifty percent of the total value would place the loss to the claimants at \$2,851.00, in round numbers.

The claimants have alleged in their petition for review, but have not proved, that the amount of damage as fixed in the Lawson appraisal had been based on evidence without the record. It seems clear that the largest portion of the ranch was only fit for pasture. There were portions of the land along the Rio Grande which could have been irrigated and as a result thereof have raised sustenance crops which would have fed the cattle during the bad years or have enabled the ranch to have finished off the cattle rather than ship them as grass-fed stock. Apparently no great effort had been made to provide for such irrigation and it is not certain how much of such land was subject thereto. This Commission holds that, in view of the absence of any convincing evidence to justify a higher valuation, it would be fair to evaluate the tillable land at 25 pesos per hectare and the other land at 2 pesos per hectare, except that portion for which an allowance of 0.3 pesos per hectare is made as severance damages. The figure of 2 pesos is based on an average.

The areas and classifications of land corresponding to the several dates on which property was affected are as follows, the dates not followed by asterisks denoting decrees of expropriation:

<i>Date of decree</i>	<i>Tillable</i>	<i>Pasture</i>	<i>Partly mountainous</i>	<i>Unclassified</i>	<i>Total</i>
Feb. 4, 1929.....	739	3,261	.....	.....	4,000
Jan. 23, 1930.....	.....	.....	.....	30,812	30,812
Feb. 3, 1930.....	.....	12,044	.....	.....	12,044
Jan. 20, 1931.....	.....	.....	.....	12,416	12,416
Apr. 2, 1931 ¹.....	.....	.....	.....	393,623	393,623
April 2, 1931 ².....	.....	.....	39,917	.....	39,917
May 15, 1931.....	.....	1,632	.....	.....	1,632
Apr. 24, 1937.....	352	4,400	.....	.....	4,732
Oct. 4, 1938.....	.....	.....	.....	1,800	1,820
	1,091	21,337	39,917	438,651	500,996

¹ Date Tercera Zona title became void.

² Date used for time of severance damage.

Application of the above-mentioned values to the areas expropriated on the respective dates results, in round numbers, in the following appraisal in U. S. currency:

<i>Date of decree</i>	<i>Total pesos</i>	<i>Rate of exchange</i>	<i>U. S. Cy.</i>
Feb. 4, 1929.....	24,997	2.0891	\$11,965
Jan. 23, 1930.....	61,624	2.0734	29,721
Feb. 3, 1930.....	24,088	2.0734	11,617
Jan. 20, 1931.....	24,832	2.1200	11,713
Apr. 2, 1931 ¹	787,246	2.1000	374,879
Apr. 2, 1931 ²	5,988	2.1000	2,851
May 15, 1931.....	3,264	2.1000	1,554
Apr. 24, 1937.....	17,600	3.5500	4,958
Oct. 4, 1938.....	3,600	4.9000	735
			449,993

¹ Date Tercera Zona title became void.

² Date used for time of severance damage.

The claimants' contention that the computation of value should be allowed at 0.4985 for each peso has been considered and rejected in the *Horace W. Corbin* claim, 189, Series B, Decision No. 3. It is sufficient to state that the appraisal was made in dollars and section 7 of the aforesaid Act has no application.

The claimants are awarded the principal sum of \$449,993.00 with interest from dates of expropriations, as provided in the Act.

DECISION No. 19-C

Agrarian Docket No. 204. Claimant: Kansas-Chiapas Company. Amount claimed: \$73,230.00. Amount awarded: \$7,207.43.

This claim is before the Commission pursuant to the provisions of section 4(d) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 15 dated January 12, 1944).

It was alleged in the claim presented to the Agrarian Claims Commission that 1,796 hectares of land designated Olsburg y Anexo and located in the Municipality of Pijijiapam, State of Chiapas, Mexico, belonging to the claimant were seized "by the agrarians" and that the value of such land was \$73,230.

The claim was itemized as follows: (1) \$60,300 for 603 hectares of irrigated farm land at \$100 per hectare; (2) \$3,000 for 200 hectares of grazing land at \$15 per hectare; and (3) \$9,930 for 993 hectares of timber land at \$10 per hectare.

Claimant acquired this property by deed of sale on September 25, 1911 for a consideration of 18,158 pesos. It is alleged that certain surveying operations were performed upon the land at an approximate cost of \$250 and that a building costing about \$200 was placed upon the property to house the caretaker. By reason of alleged revolutionary activities, looting and destruction, claimant asserts that no further improvements were made on the land.

By a Presidential decree of April 9, 1934 there were expropriated 187 hectares of said land and by another such decree of Au-

gust 27, 1935, 416 hectares. The claimant was dispossessed of the former tract on September 3, 1931, and of the latter on May 1, 1935.

Commissioner Lawson found that none of claimant's property was shown to have been affected by decrees of expropriation other than the said 603 hectares and that the aforesaid values assigned to the property by the claimant were unsupported by the evidence. He made an appraisal of \$2,548 for the 603 hectares based on the fiscal value of 15 pesos per hectare with interest from the dates of expropriation.

On petition for review it is contended that Commissioner Lawson erred: (1) in limiting his appraisal to 603 hectares, it being contended that the agrarians took possession of all of the claimant's land; (2) in evaluating the land upon the basis of its fiscal value; and (3) in failing to make an allowance for the loss of use of the 603 hectares prior to their expropriation by way of an award of interest.

With regard to petitioner's first contention, claimant's mere assertion that all of its property had been in the possession of agrarians for some time is not of itself proof of that fact. The Commission's view of the evidence is that it establishes loss of use and title only with respect to 603 hectares.

The second contention appears to this Commission to have merit. It is noted that the fiscal value of the entire tract of 1,796 hectares was 26,940 pesos, or at the rate of 15 pesos per hectare. The evidence shows that at least part of the expropriated land was productive and well located. By reason of the unsatisfactory proof the exact value cannot be determined. However, the Commission is of the opinion that 40 pesos per hectare would more nearly reflect the fair value of the area expropriated. The value of the expropriated land upon said basis would be 24,120 pesos. At the rate of exchange (3.55 x 1) applicable on the dates of expropriation, April 9, 1934 and August 27, 1935, the land would be worth \$6,794.36 and an award in said amount is hereby made to claimants.

Upon the claim for loss of use of the 603 expropriated hectares the Commission awards the sum of \$328.70 for the loss of use of the 187 hectares and the sum of \$84.37 for the loss of use of the 416 hectares from the respective dates of dispossession mentioned above to the dates of the respective expropriation decrees.

Accordingly, the claimant is awarded the sum of \$7,207.43 with interest, from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 56-C

DECISION No. 86-E

Agrarian Docket No. 205. AMC Docket No. 55. Claimant: Sara Briction Suby, Administratrix of the Estate of I. O. Briction, deceased. Amount claimed: \$1,271,731.25. Amount awarded: \$184,793.09.

This claim is before the Commission pursuant to the provisions of section 4 (d) of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having been made by the American Commissioner designated under the Agrarian Claims Agreement

of 1938, and a review of that appraisal having been granted by this Commission (Order No. 38).

Claimant seeks indemnification in the amount of \$1,200,578.75 for the alleged loss of the entire tract of 960,463 *acres* of land known as the Hacienda de San Jose de las Rusias, located in the State of Tamaulipas, Mexico, originally owned by I. O. Brietson, deceased, and valued by the claimant at \$1.25 per *acre*.

In the claim as filed with this Commission claimant takes the position that if the Commission does not determine, on the petition for review, that the entire hacienda had previously been involved, a new claim therefor should be considered by this Commission. In accordance with the established procedure of this Commission, the new claim is consolidated with the review of the appraisal and the entire claim is now before us for determination.

The American nationality of all the heirs of I. O. Brietson has been established, with the exception of that of one Manuel Brietson, a son of Louis Brietson, deceased. Said Louis Brietson was a son of said I. O. Brietson. It is not established that said Manuel Brietson is a citizen of the United States. It appears that he may be a citizen of Mexico, or that he may have a dual citizenship. Consequently, no award may be made for his share of the estate, amounting to 1/20th of the total damage sustained by claimant.

I. O. Brietson purchased the property in 1898 for a stated consideration of 600,000 pesos later reduced to 525,000 pesos, part being paid in cash and the balance in installments. The conveyance called for 316,000 hectares of land, and while details of certain litigation have not been furnished, it appears that 16,000 hectares of land were adjudicated to another. Claimant, therefore, owned 300,000 hectares of land (741,300 *acres*) for which there was paid 525,000 pesos as aforesaid. The conveyance also stated that the property was an established cattle ranch and that included in the sale was all the personal property necessary for the operation of a ranch, including some eight or nine thousand head of cattle.

Claimant contends that the ranch consisted of 1,000,000 *acres* and has furnished some affidavits to the effect that I. O. Brietson had always referred to the property as a million *acre* ranch and that it was commonly reputed to be of such a size. It is claimed that it was never surveyed. Such evidence is not convincing in view of the definite language of the conveyance. It is presumed that claimant arrives at his determination of the alleged extent of the area of the hacienda (960,480 *acres*) by deducting from the above mentioned 1,000,000 *acres* the 16,000 hectares (39,520 *acres*) alleged to have been adjudicated, as aforesaid.

Claimant listed in the original claim some 20 alleged expropriations. Eight of the said alleged expropriations are based on the fact that applications had been made for such expropriations. Such requests do not have the effect of divesting claimant of title.

Claimant states that taxes were not paid on the property after 1937 and seeks to justify such failure by asserting that Mexico deliberately assessed taxes so that on refusal to pay them the

State could take over the land for expropriation purposes. While the legal method of tax foreclosure in Tamaulipas seems somewhat drastic and summary as compared to the provision for tax foreclosures obtaining in many of the States of the United States, claimant makes no contention that such foreclosure proceedings were illegal or that they were not applied impartially. Neither does claimant charge that the taxes were of a confiscatory nature. This Commission, therefore, finds no merit in the contention of claimant that the land of which claimant has been divested of title by foreclosure proceedings for unpaid taxes should be considered the property of claimant for the purposes of this claim.

The Agrarian Claims Commission held that 12 expropriations had been shown resulting in a taking of 25,806 hectares, and in its appraisal said Commission valued said land at a rate which amounted to 11 pesos per hectare. In the claim before this Commission claimant has submitted affidavits of several witnesses whose testimony is to the effect that the property involved in this claim was worth an average of \$1.25 per acre and upwards. Attention is also called by claimant in his statement of claim to the fact that some \$200,000.00 was spent in litigation over the property. Claim is also made for improvement of livestock, equipment and permanent improvements. From a careful consideration of the record we conclude that the appraisal previously made of the expropriated property by the Agrarian Claims Commission, to wit: 11 pesos per hectare, was fair and just and that the facts in the record as established before this Commission would not warrant an award in excess of said amount for the property expropriated. We do not regard that the sum allegedly expended in litigation in any wise enhanced the value of the property. With respect to the amount allegedly expended for improvements, etc., no detailed figures are submitted, and the other evidence concerning the same is of a contradictory nature.

The Agrarian Claims Commission made no award for severance damage although such claim was asserted. The record clearly establishes, however, that the unexpropriated lands belonging to claimant did suffer material depreciation as a consequence of the expropriation of the property affected by the aforesaid Presidential Decrees. Such property included headquarters of the ranch and source of water supply, and the unexpropriated property was distinctly damaged in being severed therefrom. We find that the severance or consequential damage to the unexpropriated property may be fairly estimated at 2 pesos per hectare. We find that such severance damage was suffered because of the 12 expropriations and before claimant had lost title to the land by reason of tax foreclosure. In view of the lack of specific information as to the exact amount of severance damages resulting from each expropriation decree, the Commission will consider, for the purpose of fixing a date for the commencement of interest, that such damages took place on September 7, 1938, the date of the last three expropriation decrees.

Claimant has furnished evidence of 12 expropriations listed below. The other eight expropriations listed in the original claim have either not been proven or are shown to have occurred

after claimant lost title to the property by reason of foreclosure proceedings for unpaid taxes. The valuation of the property at 11 pesos per hectare is converted to dollars at the rate of exchange officially prevailing on the respective dates such expropriations occurred.

<i>Date of decrees</i>	<i>Number hectares</i>	<i>Pesos</i>	<i>Rate of exchange</i>	<i>Dollars</i>	<i>Dollars less 1/80th</i>
2/23/28.....	1,755.61	19,311.71	2.11	\$9,152.47	\$8,694.85
7/24/30.....	696.00	7,656.00	2.10	3,645.71	3,463.42
7/24/30.....	912.00	10,032.00	2.10	4,777.14	4,538.28
3/31/37.....	4,436.00	48,796.00	3.55	13,745.35	13,058.08
4/7/37.....	2,492.00	27,412.00	3.55	7,721.69	7,335.61
3/31/37.....	3,140.00	34,540.00	3.55	9,729.58	9,243.10
3/24/37.....	3,032.00	33,352.00	3.55	9,394.93	8,925.18
3/31/37.....	2,600.00	28,600.00	3.55	8,056.34	7,653.52
6/16/37.....	1,408.00	15,488.00	3.55	4,362.82	4,144.68
9/7/38.....	783.00	8,613.00	4.90	1,757.76	1,669.87
9/7/38.....	2,276.00	25,036.00	4.90	5,109.39	4,853.92
9/7/38.....	2,276.00	25,036.00	4.90	5,109.39	4,853.92
	25,806.61				78,434.43

<i>Date for severance damage</i>		<i>At 8 pesos per hectare</i>			
9/7/38.....	274,293.39	548,586.78	4.90	111,956.48	\$106,358.66 184,793.09

The claimant, Sara Brietson Suby, Administratrix of the Estate of I. O. Brietson, deceased, is accordingly awarded the principal sum of \$184,793.09, provided, however, that no portion of said award may be paid to Manual Brietson, son of Louis Brietson, deceased, or to any one deriving an interest through him. The aforesaid sum shall bear interest from dates of expropriations, according to the provisions of the Act.

DECISION No. 2-C

Agrarian Docket No. 226. Claimant: Standard Fruit and Steamship Company. Amount claimed: \$1,619,572.54. Amount awarded: \$138,933.88.

This claim was originally filed with the Agrarian Commission in the names of Antonio Penedo and Charles Leftwich in the amount of \$424,310.05 and was predicated upon losses alleged to have resulted from expropriation of 7,462.10 hectares of land situated in Mexico, in the District of Tuxtepec, State of Oaxaca, and in the District of Cosamaloapan, State of Veracruz, under ten Presidential decrees and two alleged decrees issued by state authorities during the years from 1932 to 1937.

On or about July 15, 1932 the Compañía Frutera Standard de México, S.C.P., S. A., a Mexican corporation, acquired the land by purchase, the consideration being mentioned in the deed as 450,000 pesos, including the value of railroad, buildings, livestock, banana cultivation, and other equipment. Part of the land was in cultivation, the balance being held in reserve or left as grazing or idle land.

The original affidavit of claim filed July 31, 1939 asserted that Antonio Penedo and Charles Leftwich, both United States citizens,

were the owners of 2 and 45 shares, respectively, of the capital stock of the company, which consisted of 100 shares. The evidence submitted disclosed that Charles Leftwich had acquired his stock from two Mexican citizens on October 31, 1938, which date was after the dates of the various expropriations. The American Section of the Agrarian Commission notified the claimants that the United States Government could not espouse a claim that was not continuously owned by American nationals.

As a result, a new affidavit of claim was filed by Charles Leftwich, vice-president and treasurer of the Standard Fruit and Steamship Company, a Delaware corporation, asserting that that company was the actual owner of the property.

This new affidavit was an attempt to amend the original claim, changing the name of the claimant from two individuals to that of the Delaware corporation as the actual owner, and increasing the claim from 47 percent of the loss to the Frutera company to 100 percent of such loss. In the so-called amended claim, the amount of land said to have been expropriated was increased, the amounts alleged to have been lost by the Frutera company by reason of the expropriations were changed and in many instances increased.

Evidence was filed tending to establish that the claimant company had a continuous actual ownership of the entire capital stock of the Frutera company during the entire life of the claim.

Commissioner Lawson held that the claimant was entitled to 47 percent of the loss of the Frutera company, that the new affidavit could not be treated as an amendment except as to the change in name, and that it was filed too late to come within the jurisdiction of the Agrarian Commission as a new claim.

On a petition for review this Commission granted such petition and ordered that the claim be reviewed. Order No. 8, December 9, 1943. Under this order the case is considered on the entire record, including evidence filed since the original claim, the petition for review and the contentions filed therewith.

With respect to the so-called amended claim, it is held that it cannot be considered either as an amended claim or as a new claim. While a change in name is proper as a modification, the rule as to amendments has been stated as follows:

"The Commission, evidently, must carefully see to it that additions or substitutions of claimants do not modify the nature, amount, or nationality of the claim presented and accepted; but if such a modification is not involved, a change in the parties claimant does not necessarily give the claim the character of a new claim." *Jennie L. Corrie* (United States v. Mexico), *Opinions of the Commissioners* (1927) 213, 214; *Flora Lee* (United States v. Mexico), *ibid.* 3.

The attempted amendment here changes the amount of the claim. The loss in the original claim was for 47 percent of \$902,787.34. The modified claim alleges the loss to be 100 percent of \$1,619,572.54. Thus it does not meet the rule just quoted. Had the actual owner of the claim disclosed the truth as to ownership at the time the original claim was filed with the Agrarian Commission, the entire claim would have come within its jurisdiction.

Considered as a new claim before that Commission, it must have been filed before July 31, 1939 to come within its jurisdiction, whereas it was not filed until sometime in October, 1941.

Nor can the case be considered as a new claim before this Commission. The Settlement of Mexican Claims Act of 1942 does not give jurisdiction for this claim under any of the classes of claims specified in Section 3 (a). This Commission will, therefore, determine this case on the sole basis on which it can be adjudicated, namely, on the basis of the original claim, and will hold that the claimant is the Standard Fruit and Steamship Company. In so holding, this Commission must observe that when the original claim was presented the facts as to who was the real party in interest were known but were not disclosed. A government's honor is back of an international reclamation. The imperative need for definite information on which to base its contentions as to facts and law is obvious.

In the petition for review Commissioner Lawson's appraisal is attacked on the ground that (1) he should have considered the items in the amended claim and (2) that he failed to award damages in accordance with the evidence. The first contention has already been considered.

A careful examination of the evidence discloses that there is complete absence of proof with respect to damage to the remaining portion of the property. The value of financial statements of the corporation as evidence is largely destroyed by the claimant itself. In the original claim, various reports and statements were submitted purporting to come from company records. In the so-called amended claim, these figures were repudiated and new ones submitted also purporting to come from the books of the company. Moreover, the vice-president and treasurer of the claimant corporation has stated in his affidavit of October 8, 1941, that the book value of the property was reached by a "write-up" of \$1,152,002.25 and that this, together with another item, should be deducted, and that other adjustments should be made, which were unspecified, but which he alleges would bring the total loss to the claimant to \$1,619,572.54. In the absence of any explanation or records which establish the reason for such adjustments, it would seem that the actual value of the property as shown by the financial statements and books is not reflected therein but is, in the opinion of this officer, considerably more than a million dollars too high. Instead, therefore, of having definite book values to consider, there is only an opinion.

In the so-called amended claim a sum of \$104,372.54 is claimed for loss of buildings while in the original claim this item was for only 33,867.08 pesos. This discrepancy is explained on the ground that the latter amount "was a gross understatement and only covered a portion of the total number of buildings lost by petitioner." ("Contentions of Law," September 23, 1943, p. 24). Originally a sum of 62,151.59 pesos was claimed for loss of railways. It is now alleged that "these railways should have been valued at \$83,633.10 U. S. currency, plus the value of the San Bartolo spur which amounted to 128,541.22 pesos, less four years' depreciation." (*Id.*) The contradiction is explained on the ground

that in the original claim the railways were "erroneously valued." (*Id.*) There is an item of \$68,172.98 in the so-called amended claim for alleged loss of sundry equipment. The validity of this item is partly indicated by the fact that the value of this equipment was not even included in the original claim (*ibid.* 24, 25). Under the caption "GROWING BANANAS" (*ibid.* 27) an item of 332,638.25 pesos in the original claim is said to be "an unfortunate and inaccurate description of this particular item."

From our examination of the whole record we conclude that there is no ground for any other award than that made by Commissioner Lawson.

Standard Fruit and Steamship Company is accordingly awarded the principal sum of \$138,933.88 with interest from dates of expropriations, as provided in Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 48-C

Agrarian Docket No. 235. Claimant: John H. Steinkampf and Harry K. Smith. Amount claimed: \$94,714.00. Amount awarded: \$5,588.20.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 57, dated February 24, 1945).

In the claim presented to the Agrarian Claims Commission claimants, American citizens, sought indemnity in the sum of \$94,714 for the alleged expropriation of 10,132 hectares of land formerly comprising a part of the Hacienda Corralitos property, located to the north and west of Casas Grandes, in the District of Galeana, State of Chihuahua, Mexico.

The items of claim are as follows:

1,500 hectares of land at \$50 per hectare.....	\$75,000
8,632 hectares of land at \$2 per hectare.....	17,264
Fences expropriated	2,250
Well on property expropriated	200

94,714

The expropriation was effected by a Presidential resolution dated September 30, 1936, and published in *Periodico Oficial* of the State of Chihuahua on February 13, 1937, which doctated 10,132 hectares to the village of Guadalupe Victoria. The resolution recites that 5,025 hectares were expropriated from the 25,000 hectares belonging to Clodoaldo Barrera, in whose land the claimants had an interest. It also recites that the balance of the 10,132 hectares, i.e., 5,107 hectares, were expropriated from the Hacienda Corralitos, property of Compañia Ramos, S. A.

On April 23, 1927, Francisco Irigoyen, a Mexican citizen, acquired by a tax sale a tract of land containing about 25,000 hectares situated to the north and west of Casas Grandes which tract "formed part of the lands of the old hacienda of Corralitos and Annexes, property of the Corralitos Company." This tract was affected by said expropriation.

On December 14, 1928, Irigoyen executed a mortgage for

22,000 pesos to claimant Steinkampf on the said 25,000 hectares, the consideration thereof being money advances made by the latter to the former. Said mortgage agreement provided that Irigoyen should not be liable personally thereon but should be responsible only with the land referred to and that Steinkampf renounced the right to pursue any other properties or assets belonging to Irigoyen or his wife. The mortgage ran for a period of ten years.

Four days after mortgaging the said property Irigoyen also executed a lease thereof to claimant Smith for a period of ten years at a rental of 110 pesos per month, and in connection therewith and for the same period, Irigoyen gave to Smith an option to purchase said land for 23,000 pesos. Smith paid to Irigoyen, as consideration for said option, the sum of 1,000 pesos.

On October 28, 1932, Irigoyen conveyed the above-mentioned property to Clodoaldo Barrera, subject to the aforementioned mortgage in favor of claimant Steinkampf and subject also to the said lease and option to purchase in favor of claimant Smith.

Commissioner Lawson appraised the claim of Steinkampf in the amount of \$1,245.63 with interest from September 30, 1936, and disallowed the claim of Harry K. Smith. In arriving at this appraisal he concluded that the claimant had failed to show that the said resolution affected the 25,000 hectares covered by the mortgage except to the extent of 5,025 hectares. He held that Steinkampf "was entitled to recover as a result of that expropriation 5,025/25,000 of the mortgage debt of 22,000 pesos, or 4,422 pesos, equivalent at the rate of exchange (3.55 x 1) applicable on the date of expropriation (September 30, 1936), to \$1,245.63." As to claimant Smith, he held that the insufficiency of evidence as to value of the option to purchase precluded any award therefor.

On petition for review it is contended (1) that not only the tract of 5,025 hectares mentioned above but also the balance of the 10,132 hectares expropriated, namely, 5,107 hectares, was part of the tract belonging to Clodoaldo Barrera in which the claimants had an interest; (2) that not the amount of the mortgage debt but the value of the property as established by the evidence should be the basis of the damage to Steinkampf; (3) that Smith is entitled to an award for his rights under the lease and the option to purchase; and (4) that there should be an award for the cost of the fences and other improvements.

Petitioners' first contention has merit. Commissioner Lawson stated in his memorandum opinion:

"It appears that as a result of a tax sale, Francisco Irigoyen, a Mexican citizen, on April 23, 1927, acquired by purchase a tract of land containing approximately 25,000 hectares, which included the above mentioned area of 10,132 hectares."

Further on he stated that only 5,025 hectares were expropriated from said tract.

The description of said tract is given in several annexes by metes and bounds. The map of the area delivered by order of the Governor, dated September 1938, conforms to the description in

said annexes. While the Presidential resolution expropriated "10,132 hectares, to be taken as follows: from the hacienda Corralitos, property of the Compañía Ramos, S. A., 1,016 hectares of crop lands and 4,091 hectares of pasture and forest lands and from the lands of Lic. Clodoaldo Barrera 5,025 hectares of pasture and forest land . . .", it fails to give any description by metes and bounds of the expropriated area. George W. Houghton, who was the agent for Barrera, Steinkampf and Smith, in all of the above-mentioned transactions between them, states in his affidavit of May 3, 1939, that he has been residing in Corralitos, Chihuahua, Mexico, for forty years; that for the last several years he was familiar with the tract of land belonging to Barrera; that he knows that there was expropriated by the Mexican Government "10,132 hectares of this tract to form the Colony of the Guadalupe Victoria"; and that he was forced to pay the taxes on this land since it was expropriated. In another affidavit, dated February 15, 1940, he states: "that he knows of his own knowledge that no part of the 10,132 hectares stated in the Resolution to belong to the Corralitos Company, belonged to said Company or to Compañía Ramos, since it was sold for taxes to Sr. Irigoyen"; and that he marked the land expropriated on the plan which he furnished for the use of claimants herein.

The Commission is of the opinion that the 10,132 hectares expropriated by said Presidential resolution were part of Barrera's property above mentioned.

The second contention is also considered to be meritorious. Steinkampf's interest was in the land expropriated and he is entitled to receive just compensation for the loss which he has sustained as a result of the expropriation. An award to claimant Steinkampf, the mortgagee, on the basis of the formula evolved by Commissioner Underwood does not assure such just compensation since it does not appear that all the land herein expropriated was of equal quality or value. In *Bank of Auburn v. Roberts*, 44 N. Y. 192 (1870), it was held that where mortgaged property is depreciated in value by the abandonment of a contiguous canal, pursuant to a law providing that compensation therefor shall be paid to the owners, the mortgagees are entitled to have the award first applied to the payment of the mortgage lien. See also *Sarapin v. City of Philadelphia*, 306 Pa. 388, 159 A. 866 (1932); *Mahoning National Bank v. City of Youngstown*, 143 Ohio St. 523, 56 N. E. 2d 218 (1945).

Article 175 of the Agrarian Code of the United Mexican States provides partly as follows:

"Liens on properties sustaining agrarian affectations shall be extinguished in proportion to that part of the property affected, the security of the creditors being limited in such cases to the proportion of the indemnity accorded to the parties affected under this code. Therefore, the actions of the creditors with respect to the extinguished portions of the liens, may only apply to such property of the debtors as may be proportional to said indemnity."

Considering the evidence bearing on the affected portion of the land and its value, we have the Presidential resolution which

states that there were 1,016 hectares of crop lands and 4,091 hectares of pasture land and forest lands, and 5,025 hectares of pasture and forest lands, making a total of 10,132 hectares. Houghton states in his affidavits that 1,500 hectares are farming land and 8,632 hectares are first-class pasture land. He values the farming land at \$50 a hectare, and the first-class pasture land at \$2 a hectare. Another affiant, Otis Jeffers, states the same values for the same classifications and areas, respectively. Charles Morehead Newman made affidavit for the same values, though he does not give the number of hectares in each classification. On the basis of 1,500 hectares farming land and 8,632 hectares of first-class pasture land, and the valuation of \$50 and \$2 per hectare, respectively, the value of the expropriated portion of the land would be \$92,264. There having been expropriated 10,132 hectares, the balance of the tract on which Steinkampf holds the mortgage is 14,868 hectares. The classification of the entire 25,000 hectare tract and the values for each classification are:

1,500 hectares, seasonal lands at \$50.00 per hectare.....	\$75,000
10,000 hectares, pasture, first grade at \$2.00 per hectare.....	20,000
12,000 hectares, grazing, second grade at \$1.00 per hectare.....	12,000
1,500 hectares, mountainous at \$0.50 per hectare.....	750

107,750

* The entire 25,000 hectare tract being valued at \$107,750, and the expropriated area being valued at \$92,264, Steinkampf's mortgage of 22,000 pesos was, therefore, affected in the proportion that \$92,264 bears to \$107,750, or .856278 percentum, which results in the sum of 18,838.12 pesos, equivalent at the rate of exchange (3.55×1) applicable on the date of expropriation (September 30, 1936) to \$5,306.51.

With respect to the third contention, concerning Smith's right as lessee, it may first be observed that the right of a lessee to compensation in condemnation of the land or property upon which there is a leasehold is generally recognized and just compensation is provided. In *Kohl v. U. S.*, 91 U.S. 367 (1875) the court held that where leased property is condemned, the lessee is entitled to so much of the market value of the property as his unexpired term is fairly worth, over and above the amount of rent he is bound to pay. See also *Clark v. U.S.*, 67 Ct. Cl. 337 (1929); *Howard Co. v. U.S.*, 81 *ibid.* 646 (1935); and Article 175 of the Agrarian Code of the United Mexican States, *supra*.

Smith claims under the above-mentioned lease from Irigoyen. Smith had paid the rental as therein provided for three years and ten months from December 18, 1928 to October 28, 1932. There is, however, no evidentiary basis for allowing any compensation for the unexpired term of said lease, as there is no evidence of its value.

With respect to the option to purchase forming part of the lease agreement above mentioned, it appears that Smith paid to Irigoyen 1,000 pesos in advance as earnest money for the option to purchase said entire tract at the price of 23,000 pesos, same being credited on said purchase price. At the time of the expro-

priation said option had about two years remaining for its exercise by Smith.

A lessee's option to purchase the premises does not create in him any estate for which he is entitled to recover compensation in addition to the value of his leasehold interest. The option alone gave the lessee no interest in the real estate. He became a purchaser only upon the due exercise of the option. *Cornell-Andrews Smelting Co. v. Boston & Prov. R. Corp.*, 209 Mass. 298, 95 N.E. 887, cited with approval *Re Water Front on Upper New York Bay*, 157 N.E. 911, 921 (1927). However, inasmuch as Smith had paid 1,000 pesos for said option, the Commission is of the opinion that he suffered the loss of 1,000 pesos and compensation is allowed therefor in said sum, equivalent at the rate of exchange (3.55 x 1) applicable on the date of expropriation to \$281.69.

As to the fourth contention in the petition for review, the cost of the fence and other improvements on said property are taken into consideration in valuing the same.

Accordingly, the claimant, John H. Steinkempf, is awarded the sum of \$5,306.51 with interest, from date of expropriation, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, and the claimant, Harry K. Smith, is awarded the sum of \$281.69 with interest from date of expropriation.

DECISION No. 63-C

Agrarian Docket No. 243. Claimant: Adelbert A. Taylor. Amount claimed: \$51,488.51. Amount awarded: \$15,360.19.

This is a claim to be indemnified in the sum of \$51,488.51 for the expropriation of 4,253 hectares of land comprising a part of the Hacienda San Felipe de Hajar, situated in the Municipality of San Sebastian, State of Jalisco, Mexico, under two Presidential Decrees of December 8, 1937, and July 19, 1939.

This claim originally was filed with the Agrarian Claims Commission, but no appraisal was made therein. After the establishment of this Commission, claimant served notice of an intention to file a petition for a review of said action of the Agrarian Claims Commission. However, no petition was filed within the time allowed for such filing and an order of disallowance was accordingly made on June 7, 1944. (Award No. 515) On August 1, 1945, a petition for review was filed for the first time. Considering all the facts in this claim and the extenuating circumstances shown for failure to file such petition earlier, this Commission deemed it appropriate to recall said disallowance and to consider the petition on its merits.

The facts are as follows:

On November 5, 1924, and August 7, 1925, the claimant, an American citizen, and his brother, Alonzo L. Taylor, a Mexican citizen, acquired ownership of two parcels of land in said hacienda containing, respectively, 4,726 hectares and 4,500 hectares, at two tax foreclosure sales. Title to these tracts was taken in the name of claimant's brother, said Alonzo L. Taylor, now deceased. The price paid for the first tract of 4,726 hectares was 43,120 pesos, or at the rate of approximately 9.12 pesos per hectare. The price of the second tract of 4,500 hectares was 10,512.64

pesos, or at the rate of approximately 2.34 pesos. The fiscal valuation of the first and second tracts is 30,000 pesos and 16,426 pesos, respectively.

By an instrument executed between said brothers on August 9, 1926, they agreed to share equally the cost of acquiring said two tracts.

A partition of said properties between said brothers was affected on March 19, 1927. Claimant received the first tract, excepting therefrom a small parcel; and in addition he received a number of fractions acquired in the second tract.

On May 18, 1938, claimant's said brother, Alonzo Taylor, executed an instrument in which he declared that the land dotated as ejides in part of the San Felipe de Hajar, called "El Sitio," belongs to the claimant pursuant to the aforesaid contract of partition. Alonzo Taylor also renounced all claim thereto in favor of the claimant so that he might seek indemnification therefor, as well as to make claim in connection with any possible expropriations of said tract in the future.

It appears from the evidence that certain portions of the land were rented, plowed and planted in 1938, and that claimant was dispossessed of same, resulting in the loss of income therefrom.

Taxes were paid on the properties by claimant and his brother for ten years.

When acquired said properties had buildings and other improvements thereon.

Opinion evidence was offered as to land values by owners of land in the vicinity. They state that it is customary to pay 300 pesos per yunta (4 hectares) for land producing 60 hectoliters of corn and 10 hectoliters of beans per hectare. Another opinion as to the value of the buildings states that the construction of such buildings in 1940 would cost 100,000 pesos.

Two Presidential decrees affected the land. The first was dated December 8, 1937, and published in *Diario Oficial* on July 11, 1938, whereby 638.60 hectares were expropriated, and are described as follows:

Hectares	Tillable	Pasture	Seasonal
622.40	248.96	373.44	.....
16.20	.....	.....	16.20
638.60			

¹ Total hectares definitely expropriated.

This decree affected "Potrero del Sitio" extension and this land was dotated to Poblado "La Tortuga."

The second Presidential decree was dated July 19, 1939, and was published in *Diario Oficial* on December 4, 1939. It expropriated 2,064 hectares for Poblado San Felipe de Hajar from the hacienda of the same name. It confirmed the provisional possession given by the Governor of the State of Jalisco on June 16, 1939. The area expropriated by this Presidential decree is described as follows:

Hectares	Cultivable	Temporal	Pasture	Tillable	Unimproved
52.00	52.00				
600.00		600.00			
783.20 { 391.60			391.60		
391.60				391.60	
128.80 { 25.76				25.76	
103.04			103.04		
300.00				300.00	
200.00					200.00
2,064.00					

¹ Total hectares definitely expropriated.

After a careful consideration of all the available evidence, the Commission concludes that the following is a fair and just valuation of the land expropriated under the first Presidential decree, according to the classification of the land in said decree:

	Pesos
248.96 hectares at 20 pesos per hectare (tillable).....	4,979.20
373.44 hectares at 10 pesos per hectare (pasture).....	3,734.40
16.20 hectares at 50 pesos per hectare (seasonal).....	810.00

638.60 hectares Total 9,523.60

The sum of 9,523.60 pesos, converted at the rate of exchange (3.55 x 1) applicable at the time of expropriation, December 8, 1937, amounts to \$2,682.70 United States currency.

Likewise, the Commission finds the fair and reasonable value of the land expropriated under the second Presidential decree, adopting the classifications contained therein, to be as follows:

	Pesos
52.00 hectares at 30 pesos per hectare (cultivable).....	1,560.00
600.00 hectares at 50 pesos per hectare (temporal).....	30,000.00
391.60 hectares at 10 pesos per hectare (pasture).....	3,916.00
391.60 hectares at 20 pesos per hectare (tillable).....	7,832.00
25.76 hectares at 20 pesos per hectare (tillable).....	515.20
103.04 hectares at 10 pesos per hectare (pasture).....	1,030.40
300.00 hectares at 20 pesos per hectare (tillable).....	6,000.00
200.00 hectares at 10 pesos per hectare (unimproved).....	2,000.00

2,064.00 hectares Total 52,853.60

The sum of 52,853.60 pesos, converted at the rate of exchange (4.95 x 1) applicable at the time of expropriation, July 19, 1939, amounts to \$10,677.49 United States currency.

The total valuation of the expropriated land under both decrees is \$13,360.19.

The evidence indicates that claimant has also suffered severance damages. Certain improvements suffered depreciation and there was also a depreciation in the use of water rights and of the water dams. The Commission considers that the sum of \$2,000.00 is a fair and just compensation therefor.

Claimant is accordingly entitled to \$13,360.19 for the expropriated lands and \$2,000.00 for severance damage, or a total of \$15,360.19.

William C. Holmes, attorney, has applied under the applicable provisions of the Act aforesaid, for a determination by the Commission of his attorney's fees for the services rendered by him in this claim and the Commission, after careful consideration,

determines that the sum of \$2,500.00 is just and equitable, and such fee is made part of the award herein.

Accordingly, the Commission awards the principal of \$15,360.19 payable as follows:

To Adelbert A. Taylor, \$12,860.19; William C. Holmes, for attorney's fee, \$2,500.00.

with interest from dates of expropriations, as provided in Section 7 of the Act.

DECISION No. 16-C

Agrarian Docket No. 247. Claimant: Esther M. Newman et al. Amount claimed: \$232,894.50. Amount awarded: \$19,768.00.

This claim, in the sum of \$232,894.50, arises out of losses resulting from the alleged expropriation of land of the Hacienda Tecuán, situated in the District of Lagos, State of Jalisco, Mexico, and on the boundary line between the States of Aguascalientes and Jalisco.

It appears that said property was purchased about 1901 by Antonio Morfín Vargas. On March 17, 1924, the said Vargas, by gift deed recorded on May 26, 1924, at Lagos de Marenco, Jalisco, conveyed to Esther M. Newman and María Morfín de Rubio, his daughters, a joint and undivided portion of said hacienda, containing an area of about 2,160.9 hectares. The portion of the hacienda retained by Mr. Vargas contained an area of 1,958.5 hectares. On or about December 4, 1933, Esther M. Newman and her sister, María Morfín de Rubio, divided the 2,160.9 hectares into eleven parcels, eight of them among the eight children of Esther M. Newman, two parcels to two Mexican citizens, and one parcel was reserved for said Esther M. Newman. María M. de Rubio quitclaimed all her rights in said parcels. On September 23, 1933, Mr. Vargas renounced his rights to the usufructs of the property he had conveyed to Esther M. Newman and her sister.

The division of the said 2,160.9 hectares was as follows:

<i>Parcel No.</i>	<i>Owner</i>	<i>Hectares</i>
1	Anna María Newman.....	149.6
2	Esther Newman.....	131.4
3	Martha Newman.....	123.6
4	Esther M. Newman.....	292.4
5	Richard William Newman.....	150.0
6	Anthony S. Newman.....	255.3
7	Alfonso Gomez Morentin.....	292.7
8	Max Philip Newman.....	139.7
9	Bruno Newman, Jr.....	299.2
10	Robert Louis Newman.....	173.6
11	Rafael Villalpando.....	153.4
		2,160.9

The last named parcel was on January 24, 1939, acquired by and is held by Bruno Newman, Sr., husband of Esther M. Newman.

By Presidential decree of January 13, 1937, 1,000 hectares of the hacienda were expropriated, being the property of Antonio Morfín Vargas and of his said two daughters. It did not specify

what area was to be taken from the portion given to the daughters or from the portion retained by the father.

The claimants, Mr. and Mrs. Bruno Newman, Sr., and their eight children, all American citizens, make claim for the 1,000 hectares, and, in addition thereto, for 1,267 hectares, as to which they state that they have "recently been advised" were expropriated from said hacienda under a decree of the Governor of the State of Jalisco, dated August 1, 1938.

Commissioner Lawson found that since no evidence was furnished with respect to this latter mentioned expropriation, there is no proper basis for the consideration thereof in his appraisal. As to the expropriation of the 1,000 hectares previously mentioned, there was an absence of adequate evidence to show to what extent, if any, claimants' portion of the hacienda was affected thereby. He, therefore, disallowed the claim.

The petition for review filed herein was accompanied by a petition to introduce additional evidence. The chief contention is that Commissioner Lawson erred in not making an award in favor of the claimants on the basis of the evidence before him. The petition for review was granted by this Commission under Order No. 47, dated August 21, 1944, and the additional evidence offered with the accompanying petition was permitted to be filed and was received in evidence on same date.

It appears from the additional evidence that the Governor's decree of August 1, 1938, indicates that only 444.5 hectares, out of a total area of 1,541.5 hectares expropriated for the Town of El Tecuán, were from the Hacienda Tacuán, without specifying whose property was affected. From other newly admitted evidence it appears that a decree of the President of Mexico dated January 31, 1940, published in the *Diario Oficial* of April 24, 1943, modified the Governor's decree of August 1, 1938, by reducing the total area given to the Town of El Tecuán to 737 hectares. This Presidential decree specifically recites that of the area expropriated, 49 hectares of irrigated land were taken from the property of Anna María Newman, and 31 hectares of irrigated land were taken from the property of Esther Newman. This expropriation occurred within the period over which this Commission exercises jurisdiction and relates back to the original claim which was heretofore appraised by Commissioner Lawson but as to which no evidence was presented before him.

In this connection it is noted that whereas the Presidential decree of January 31, 1940, recites that the Governor's decree of August 1, 1938, expropriated a total of 1,267 hectares from the Hacienda Tecuán, the certified copy of an extract from the Governor's decree offered by claimants and received as additional evidence (Exhibit 1), recites that a total of only 444.5 hectares were thereby expropriated from the Tecuán property. Apparently there may be some inaccuracy in the portion of the Governor's decree furnished by claimants.

In the absence of convincing evidence showing that claimants' property was definitely affected either by the Presidential decree of January 13, 1937, or by the Governor's decree of August 1, 1938, it is the opinion of this Commission that claimants are not

entitled to an award as to their claim based thereon. However, with respect to the Presidential decree of January 31, 1940, we consider that claimants Anna María Newman and Esther Newman are each entitled to an award for their respective losses.

Claimants state values of \$100 per acre for irrigable land, and \$50 per acre for arable land. In an affidavit of William C. Hart, sworn to July 7, 1939, he asserts that he is an agricultural engineer by profession and has been engaged in varied agricultural pursuits for eight years theretofore. He states that he examined the El Tecuán tract and made a thorough study of the values and productiveness of same. In his opinion he gives the following values for said land: \$100 per acre for irrigable land; \$50 per acre for arable but not irrigable land; and \$30 per acre for grazing lands most of which could be put under cultivation.

Considering this evidence as to value of the land and that pertaining to the cultivation of some of the land and the products raised thereon, and considering further that the land expropriated under the Presidential decree of January 31, 1940, is described as irrigated land, it is the opinion of this Commission that Anna María Newman and Esther M. Newman should be awarded the sum of \$100 per acre, which is based on the value of irrigated land.

Accordingly, the claimants are awarded the sum of \$19,768 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 31, 1940. The respective interests of the claimants in this amount are

Anna María Newman.....	\$12,108
Esther M. Newman.....	7,660

DECISION No. 45-C

Agrarian Docket No. 254. Claimant: Walter Scott Gearhart. Amount claimed: \$24,000.00. Amount awarded: \$851.02.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico and a review of that appraisal having been granted by this Commission (Order No. 43 dated August 3, 1944).

The claim is based upon the alleged expropriation of 512 hectares of land comprising a part of the hacienda El Chamal situated in the Municipalities of Ocampo and Morelos, State of Tamaulipas, Mexico, under a decree of the Governor of that State dated December 13, 1937, which was confirmed by Presidential decree dated September 28, 1938.

The land was acquired by the claimant by two deeds dated October 21, 1910, for a total consideration of 810 pesos. It is not disclosed whether the claimant ever resided on the property and available information concerning the use made thereof is very meager. In an affidavit of Pleasant E. Crabtree, who also owned land in the same hacienda, dated May 13, 1940, it is stated that in 1937 there were 23 acres of claimant's land under cultivation, the principal crops grown being corn and pumpkins; that the proceeds from those crops amounted to about \$25 a year;

that about 40 acres were desirable timber land, and the balance grazing land. He adds that in 1931 there were 1,760 yards of 3-strand barbed wire fencing on the property. It appears from this affidavit that the property was rented and that affiant collected the rent. The amount of the rental is not stated.

On the foregoing showing, the American Commissioner designated under the Agrarian Claims Agreement of 1938 concluded that the expropriation of claimant's lands had not been established and he accordingly made no appraisal of the alleged losses.

The petition for review filed on behalf of the claimant challenges the correctness of the finding of the American Commissioner on the basis of the evidence which had been filed.

The Commission authorized the filing of additional evidence in support of the claim under the provisions of Section 4 (d) of the Settlement of Mexican Claims Act of 1942. On the basis of the entire record, including such additional evidence, the Commission concludes that lands of the claimant have been expropriated. The Commission recognizes the difficulty of securing proof as to the extent of said expropriation, and although the evidence with respect thereto is meager, the Commission finds that upon the basis of the entire record the evidence is sufficient to establish the expropriation of 192 hectares.

There is also very little satisfactory evidence to establish the value of said property. Tax receipts for the years 1937 and 1938 fail to indicate the value of the property for tax purposes. The purchase price of the property in 1910 appears to have been about \$1.25 an acre. Considering the evidence which has been presented in this case and in other cases involving lands in the same hacienda, the Commission is of the opinion that the reasonable and fair value of the 192 hectares in question is as follows:

	<i>Pesos</i>
25 hectares of cultivated land at 100 pesos per hectare.....	2,500
167 hectares of pasture land at 10 pesos per hectare.....	1,670
	4,170

This amount is equivalent at the rate of exchange applicable at the time of expropriation (4.90 x 1) to \$851.02.

An award is accordingly made in favor of the claimant in the amount of \$851.02 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from September 28, 1938.

DECISION No. 46-C

Agrarian Docket No. 255. Claimant: Charles Benjamin Pettus. Amount claimed: \$4,745.00. Amount awarded: \$1,326.76.

This claim is before the Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, an appraisal thereof having previously been made by the American Commissioner designated pursuant to the Agrarian Claims Agreement of 1938, between the United States and Mexico, and a review of that appraisal having been granted by this Commission (Order No. 44 dated August 3, 1944).

The claim is based upon the alleged expropriation of approximately 128 hectares of land comprising a portion of the hacienda

El Chamal, situated in the Municipalities of Ocampo and Morelos, State of Tamaulipas, Mexico, under a Presidential decree dated February 23, 1938. The amount claimed (\$4,745) is said to be the value at which the land and personal property thereon were inventoried in 1912, when claimant states he was advised by the American Consular representative to leave Mexico, on account of revolutionary disturbances.

The claimant states that he acquired this land about the year 1910 in exchange for other land which he then owned. The deed evidencing his acquisition of the property is dated May 14, 1912. At the time of its acquisition claimant states 68 acres (about 27 hectares) were in cultivation and that six tenant houses and a two-room stone residence were located thereon. Claimant adds that he enclosed the entire tract with a three-strand barbed wire fence and built other fences thereon. He resided on the property from 1910 to about the year 1913, when he abandoned it and did not thereafter return to the property, although it is stated that taxes were paid thereon as late as the year 1931.

The decree upon which the claim is based embraces a total of 2,109 hectares of land. Claimant contends that the entire 128 hectares owned by him is included in this decree. The decree contains the names of a number of owners whose land is affected thereby and in addition designates one area of 370 hectares as state lands. The area of 2,109 hectares contained in the decree coincides with the total area of land appearing on the blueprint and list purporting to be the official plat of the Agrarian department. Claimant Pettus is shown on this list as having been deprived of 117 hectares. There is no state land listed on the plat, but the total area of the land of owners named therein but not named in the decree corresponds to that described as state lands in the decree.

As to the remaining 11 hectares involved in this claim, affidavits of the claimant and of Vernie L. Medlin and Everts Storms, as well as less formal information by other settlers in that colony such as the letter of A. C. Kinnard, all tend to prove that all of claimant's land was delivered to the agrarians. While these 11 hectares were not officially expropriated (according to the blueprint this tract was a long and narrow triangle) their value to claimant was totally destroyed. The Commission therefore holds that claimant has suffered damages which are equivalent to an actual loss of all of the 128 hectares.

The evidence relating to the value of the property is somewhat meager. It appears that the claimant purchased the property in 1912 at the rate of about \$1.25 an acre. One affidavit is furnished in which a value of \$10 per hectare is placed upon the land at the time of expropriation in 1938. In a communication dated March 25, 1940, the claimant stated the lands were being used by agrarians for pasture purposes. In the light of the information before the Commission with reference to this property as well as other lands comprising portions of the same hacienda, reasonable and fair values for the expropriated area are considered to be the following:

	<i>Pesos</i>
27 hectares of cultivated land at 100 pesos per hectare.....	2,700
101 hectares of pasture land at 10 pesos per hectare.....	1,010
Small citrus orchard.....	1,000
	4,710

This amount is equivalent at the rate of exchange applicable at the time of expropriation (3.55×1) to \$1,326.76, United States currency.

An award is accordingly made in favor of the claimant in the amount of \$1,326.76 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from February 23, 1938.

SERIES E: CLAIMS

SERIES E: CLAIMS

DECISION No. 11-E

AMC Docket No. 1. Claimant: Henry W. Peabody and Company.
Amount claimed: \$74,484.24. Amount awarded: \$72,062.39.

This claim is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon the failure of authorities of the Mexican Government to give effect to decisions of the Supreme Court of that country rendered in 1928. These decisions held to be unconstitutional and void two decrees of the legislature of the State of Yucatan under which certain additional taxes were imposed on a shipment of henequen exported from Mexico by the claimant in 1924 and which were paid by claimant under protest.

Claimant is a partnership organized under the laws of the State of Massachusetts, all of its members being American citizens. At all times pertinent to the instant claim, the firm was engaged in the business of commission merchants with headquarters in Boston, Massachusetts. Its business included importing and exporting. In that connection it maintained a branch office in the City of Merida in the State of Yucatan.

In the summer of 1924, authorities of the State of Yucatan, under decrees of its legislature dated December 13, 1921 and March 7, 1922, imposed upon the claimant taxes amounting to 149,416.72 pesos on a shipment of 5,002 bales of henequen exported through the port of Progreso. These taxes were in addition to the regular taxes and imposts previously assessed and paid upon the exportation of that shipment. The claimant paid 145,823.77 pesos of said additional assessment on June 25, 1924 and 3,592.95 pesos on July 7, 1924, both payments being made under protest, as aforesaid. Immediately thereafter claimant instituted amparo proceedings in the appropriate Mexican courts to recover the excessive payments.

In decisions rendered on July 25 and September 12, 1928, the Supreme Court of Mexico held the decrees of the State legislature under which the additional taxes were collected to be unconstitutional and void. Notwithstanding those decisions by the Supreme Court, the claimant was thereafter unable to obtain a refund of any part of the amount illegally exacted by the State of Yucatan as recited above.

It appears that a proposal was made by the authorities of the State of Yucatan in 1935 to reimburse the claimant to the extent of 100,000 pesos in monthly installments of 3,000 pesos each, in full liquidation of its claim for refund of the excessive taxes. This offer was rejected by the claimant.

Claim is made herein for the amount of \$74,484.24 as provided by section 7 of the Settlement of Mexican Claims Act of 1942, with interest from January 1, 1927, claimant recognizing that date to be the earliest within the jurisdiction of this Commission in claims of this category. Said sum is the equivalent of 149,416.72 pesos (the amount of the excessive tax payments ex-

acted from the claimant) converted at the rate of exchange of \$0.4985.

The General Claims Commission, United States and Mexico, in a decision rendered on April 18, 1929, made an award for the amount of additional taxes imposed by the State of Yucatan under one of the same decrees involved herein and in favor of the claimant herein. In its decision in that case the Commission pointed out that while the decree under which the tax was levied had subsequently been held to be unconstitutional by the Supreme Court of Mexico, the additional tax paid under protest had never been returned to the claimant. The Mexican Government did not contest its liability to make compensation to the claimant in that case. (*Opinions of Commissioners*, 1929, p. 222.)

In the present claim the obligation on the part of the Mexican Government to reimburse the claimant for amounts illegally exacted as additional taxes is equally clear. The Mexican Government is liable because of failure of its authorities to enforce the decree of its Supreme Court. The amount of indemnity to which the claimant is entitled must be computed with reference to the rate of exchange applicable at the time of the illegal payments, namely, June 25 and July 7, 1924. On the former date that rate was \$0.4822, and on the latter date it was \$0.4860. Application of these rates to the respective payments made by the claimant results as follows:

Pesos		United States currency
145,823.77	at \$0.4822	\$70,316.22
3,592.95	at \$0.4860	1,746.17
149,416.72		\$72,062.39

An award is accordingly made in favor of the claimant in the amount of \$72,062.39 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from January 1, 1927.

DECISION No. 2-E

AMC Docket No. 2. Claimant: Tabasco Plantation Company. Amount claimed: \$27,258.96. Amount awarded: \$5,355.00.

This is a claim in the sum of \$27,258.96, plus two unestimated items, and is predicated upon losses alleged to have resulted from the expropriation of 1,031 hectares of land from the San Miguel Juarez plantation in the Municipality of Tacotalpa, State of Tabasco, Mexico. The expropriation was made pursuant to a Presidential decree of September 13, 1939. Jurisdiction is based on Section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

The deed of purchase recites that the plantation contained approximately 2,956 hectares (7,303 acres) and was acquired in 1908 by the claimant, a Delaware corporation, for a purchase price of 76,000 pesos. The purchase price is alleged to be the equivalent of \$37,203.40 (U.S.), or 25.71 pesos per hectare. When acquired by claimant the property appears to have been practically unimproved. It is said that by 1912 more than three hundred thousand dollars had been expended "for materials, labor and permanent improvements" in preparing the property

for the cultivation of rubber and bananas and for use as a cattle ranch. Between 1912 and 1920, however, the plantation was virtually abandoned and improvements were lost in consequence of revolutionary disturbances. In 1923 claimant was able to lease the property to one Whitle for 10 years at an annual rental of \$600.00 plus twenty-five percent of the profits, taxes to be paid by the lessee. The lease appears to have produced no income. When renewed in 1934 for a further period of 10 years, it was stipulated that, instead of a fixed yearly rental, the lessee should pay up arrears of rent amounting to \$5,600.00, pay all taxes, and pay certain grazing fees and a percent of the banana production. The Presidential decree of September 13, 1939, expropriated 1,031 hectares described as *humedad* land, subject to overflow, with portions tillable.

As filed the claim comprises (1) an item of \$12,992.76 for the 1,031 hectares (2,547.6 acres) at original cost estimated at \$5.10 per acre, (2) an item of \$14,266.20 for alleged reduction in value of the land not expropriated (4,754.4 acres at \$3.00 per acre), (3) an item of unestimated amount for loss of the lease, and (4) an item of unestimated amount for loss of subsoil rights.

Items (2), (3) and (4) must fail for want of supporting evidence. Severance damages are not presumed in the absence of proof and this record contains no evidence to establish that the value of the remaining land was depreciated by the expropriation. As regards the lease of 1934, the Mexican government would not be liable for any sums due by the lessee as a result of liability arising prior to the expropriation. As to losses after the expropriation the claimant has not submitted evidence to prove them. There is no proof that any income ever was or was likely to be received from this source. With respect to the so-called subsoil rights there is no evidence of any measurable losses. Each of these items must be disallowed.

There remains the first and principal item of claim for the value of the 1,031 hectares expropriated. The claimant is entitled to the value of this land as of the time it was taken. The evidence indicates that fiscal value averaged somewhat less than 10 pesos per hectare. The original purchase price was at the rate of 25.71 pesos per hectare. Improvements were lost or destroyed during the revolution and there is no proof of profitable operation or income received thereafter. Upon such a record, our determination of value can be no more than an approximation to the just result. We think that an allowance of 26,507 pesos, the approximate purchase price of 1,031 hectares, is warranted by the evidence and fair to claimant. Converted at the rate of exchange applicable on the date of expropriation (4.95×1), this is equivalent in round numbers to \$5,355.00 in United States currency.

Claimant is awarded the principal sum of \$5,355.00 with interest from September 13, 1939.

DECISION No. 23-E

AMC Docket No. 3. Claimants: Jay C. Long, as Executor of the Estate of James I. Long and Annie C. Long; Carl T. Long, as Executor of the Estate of Robert J. Long. Amount claimed: \$125,025.48. Amount awarded: \$35,525.95.

This claim, in the amount of \$125,025.48, is before the Commission pursuant to the provisions of section 3 (a) (2) of the Settlement of Mexican Claims Act of 1942. It is based upon the expropriation of 23,455 hectares of land situated in the Municipality of Guanacevi, State of Durango, Mexico, under a decree of the Governor of that State dated October 24, 1938, and published June 18, 1939. Provisional possession was given to the inhabitants of the poblado El Palomo on December 24, 1938.

The tract in question was part of an area of approximately 36,426 hectares in said municipality acquired from the Mexican Government on or about February 21, 1907, by Long Hermanos, a partnership consisting of James I. Long and Robert J. Long, brothers. Both were American citizens and equal partners in the firm. The price paid for this property was 65,567.97 pesos, equivalent at the time of purchase to \$32,783.98, United States currency, or about ninety cents per hectare. The fiscal valuation of the entire property for the year 1938 was 112,090 pesos or approximately 3.08 pesos per hectare.

Claimants allege that of the 23,455 hectares of land expropriated the types and values were as follows:

<i>Number of hectares</i>	<i>Type land</i>	<i>Value per hectare</i>	<i>Total</i>
703	Tillable	40 pesos (\$8.16)	\$5,736.48
22,752	Grazing timber land	20 pesos (\$4.08)	92,828.16
			98,564.64

Claim is also made for \$26,460.84, damage to the 12,971 hectares of land not expropriated by reason of their severance from the original tract. The total sum claimed is therefore \$125,025.48.

The evidence submitted as to the value of the land consists chiefly of a report of one James B. Barker, who made an inspection of the property in April 1944. He states that 3 percent of the expropriated property consisted of tillable land and 97 percent of grazing and timber land. Further, he states that there was no communication with the property by road and that the property was sixty or seventy kilometers from the Parral and Durango railroad. He makes a detailed estimate of the amount of timber on the expropriated property and, considering the other factors involved in valuation, he arrives at the following estimate as to its value:

Tillable land (3 percent) 703 hectares or 1,726 acres, at \$4.00 per acre or about \$10.00 per hectare.

Grazing and timber land (97 percent) 22,752 hectares or 56,197 acres, at \$4.50 per acre or about \$11 per hectare.

Mr. Barker also expresses the opinion that the taking of 23,455 hectares from the center of the larger tract of 36,146 hectares greatly reduced the value of the remaining portions by separating them from each other and from the main tract, thus making it impossible to develop the entire property into one large lumbering operation.

In determining the value of the land expropriated the Commission has considered the possibility of exploiting the timber on the

land as well as the possible use of the land for grazing and farming. The claimants concede that "the property has never been exploited; it is a virgin forest with no undergrowth to mention and most of it is suitable for pasture purposes." They appear to have made no other use of the land. No roads have been built connecting it with railroads or highways. Exploitation of the land for timber purposes, in the opinion of the Commission, would be only a speculative possibility. In the circumstances the land must be appraised upon the basis of its value for farming and grazing purposes. Upon such basis we find that a fair and just value for the expropriated area is approximately seven pesos per hectare or the sum of \$33,167.59 for the total area of 23,455 hectares.

The Commission also considers that damage has been sustained by the claimants by reason of the severance of the remaining land from the part expropriated. A fair and just estimate of the amount of this damage is found to be ninety centavos per hectare or a sum of \$2,358.36.

The total value of the property expropriated, plus the damage to the remaining land is, therefore, found to be \$35,525.95.

James I. Long, one of the original owners of the property is dead. Jay C. Long, a son, is the executor of his will and of that of Annie C. Long, widow of said James I. Long, also deceased. Under said wills the decedents bequeathed and devised their entire estates to their thirteen children. All of said children are shown to be American citizens. The heirs of one child, Mary L. Minogue, who died before the claim arose, are shown to be American citizens. Robert J. Long, the other partner, is also dead. Carl T. Long, a son, is executor of his estate. Under the will, the estate of said Robert J. Long is devised and bequeathed to his widow and three children, all of whom are American citizens.

Accordingly, the Commission awards the principal sum of \$35,525.95 with interest, as provided in section 7 of the Act aforementioned, from December 24, 1938, the date on which provisional possession was given to the inhabitants of the poblado El Palomo, as follows:

To Carl T. Long, as Executor of the Estate of Robert J. Long, deceased	\$17,762.98
To Jay C. Long, as Executor of the Estates of James I. Long and Annie C. Long, deceased	17,762.97

DECISION No. 28-E

AMC Docket No. 4. Claimant: John C. Wheatley. Amount claimed: \$19,327.85. Amount awarded: \$4,334.97.

This claim in the amount of \$19,327.85 is before the Commission pursuant to the provisions of section 3 (a) (5) of the Settlement of Mexican Claims Act of 1942.

The record satisfactorily establishes the American nationality of claimant during all the times pertinent to the claim.

The claimant owned two tracts of land, each 400 hectares in extent, known respectively as El Zapotal and Campo York, and an undivided one-half interest in another tract of 400 hectares known as Los Limones. All these tracts were located near each

other in the Municipality of Guichicovi, State of Oaxaca, Mexico.

Portions of the above property were expropriated under three Presidential Decrees. Two are dated June 12, 1940, and the other is dated July 24, 1940. One of the decrees dated June 12, 1940, expropriated 310.9 hectares of land from El Zapotal. The land expropriated is classified, according to the decree, as 37.2 hectares humedad, 213.3 hectares temporal, and 60.4 hectares pasture. The second decree of the same date expropriated 46.8 hectares of land from Los Limones, which was classified as temporal land. The third decree expropriated 243.8 hectares of land from Campo York, of which 73.14 hectares were classified as tillable land and 170.66 hectares as pasture land.

In his statement of claim the claimant has set forth a classification of the expropriated land similar to that stated in the decrees, except with respect to his contention that the 46.8 hectares of the Los Limones tract should have been classified as humedad instead of temporal land, and that the 73.14 hectares from the Campo York tract should have been classified as temporal instead of tillable land.

There is very little evidence as to the use, productive capacity or value of the land. The sums of \$150.00 and \$100.00, respectively were received as rental of the land in the years 1914 and 1915. The record indicates that the additional income received was sufficient to pay the taxes until 1936 at which time the agrarian lessees ceased to make rental payments.

Upon a careful consideration of all evidence adduced, the Commission concludes that the following classification of the land and the evaluation thereof are proper:

<i>Decrees</i>	<i>Hectares expropriated</i>	<i>Classification</i>	<i>Value per hectare pesos</i>	<i>Total value pesos</i>
June 12, 1940 (2 decrees) .	60.60	Humedad..	100	6,060.00
	213.00	Temporal..	60	12,780.00
	60.40	Pasture....	5	302.00
				<u>19,142.00</u>
July 24, 1940.....	73.14	Tillable....	20	1,462.80
	170.66	Pasture....	5	853.30
				<u>2,316.10</u>
Total.....				<u>21,458.10</u>

Said sum of 21,458.10 pesos, converted at the rate of exchange as of the dates of the expropriations (4.95 x 1), amounts to \$4,334.97.

In addition to the claim for the expropriation of the land as set forth above, claimant asks indemnity for damages to the unexpropriated land as a result of its severance from the remaining property. He has also asked to be reimbursed for attorneys fees expended in the preparation and presentation of the claim. However, no evidence has been submitted in support of the claim for severance damages. As to attorneys fees, we have heretofore held that they do not constitute a proper item of claim. Both of these items must therefore be disallowed.

An award is accordingly made in favor of John C. Wheatley, claimant herein, in the principal sum of \$4,334.97 with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 41-E

AMC Docket No. 5. Claimant: Frank M. Frisby, Executor of Estate of Ezra H. Frisby. Amount claimed: \$14,415.00. Amount awarded: \$5,021.00.

This is an agrarian claim in the amount of \$14,415.00 which is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is based upon the expropriation of 733 hectares of land owned by the Compania de Terrenos El Toruno, S. C. This company has made an allotment of all the losses resulting from said expropriation to Frank M. Frisby as Executor of the Estate of Ezra H. Frisby. The nationality of the claimant and the ownership of the land is established.

The property was expropriated by a decree of the Governor of Sinaloa dated June 11, 1940, and published July 18, 1940. Provisional possession was given to the agrarians on June 25, 1940. The expropriation was confirmed by Presidential Decree dated November 3, 1940, and published April 12, 1943. The Presidential Decree classifies the land as follows:

30 hectares Temporal

692 hectares Monte

It is stated in the decree that the remaining 11 hectares of land are being occupied by houses of the Village of El Toruno.

Claim is made for the value of the expropriated land and also for damages to and loss of buildings.

As to the claim for the loss of the 722 hectares of land, we find from the evidence before us that the classifications made thereof in the Presidential Decree are correct. We value the 30 hectares of temporal land at 70 pesos per hectare and the 692 hectares of monte land at 15 pesos per hectare, making a total of 12,480 pesos. At the date of expropriation the rate of exchange for the peso was 4.95 x 1. Claimant is therefore entitled to the sum of \$2,521.00 on account of the expropriation of the aforementioned 722 hectares of land.

The item for damage to and loss of buildings is comprised of \$1,500.00 for 6 adobe houses and the 11 hectares of land on which the same are located, and of \$1,000.00 for damage to the headquarters ranch house which was not expropriated but which was isolated by its separation from all the surrounding ranch property. These losses have been satisfactorily established and the damages claimed therefor are found to be reasonable.

An award is accordingly made to Frank H. Frisby, Executor of the Estate of Ezra Frisby, of the sum of \$5,021.00 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 43-E

AMC Docket No. 6. Claimant: Harry Chandler and William H. Allen, Jr. Amount claimed: \$31,590.88. Amount awarded: \$21,481.81.

This claim in the amount of \$31,590.88 is before this Commission pursuant to the provisions of section 3(a) (3) of the Settlement of Mexican Claims Act of 1942. It is based upon the expropriation of 1,390 hectares of land situated in the Municipality of Mexicali, Northern District of Lower California, Mexico. The nationality of the claimants and the ownership of the land are established. The expropriation was made under a decree of the Governor of Lower California, dated March 11, 1940. Provisional possession was given on August 17, 1940. The expropriation was confirmed by a Presidential Decree dated June 17, 1942, and published July 27, 1942.

The land expropriated is undeveloped but is susceptible to development and cultivation. After a consideration of all the evidence concerning the value of this land in the record the Commission is of the opinion that it had a value at the time of expropriation of 85 pesos per hectare. The total value of 1,390 hectares is, therefore, 118,150 pesos. This sum at the rate of exchange (4.95 x 1) applicable on the date of expropriation is equivalent to \$23,868.68 United States currency. The interests of the claimants in the land are as follows:

	<i>Percent</i>
The Estate of Harry Chandler.....	85
William H. Allen, Jr.....	5

Accordingly, the Commission awards the principal sum of \$21,481.81 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942 from August 17, 1940, the date of provisional possession, as follows:

To the Estate of Harry Chandler.....	\$20,288.38
To William H. Allen, Jr.....	1,193.43

DECISION No. 121-E

AMC Docket No. 7. Claimant: Nadine P. Miller et al. Amount claimed: \$98,582.02. Amount awarded: \$62,909.09.

This claim in the amount of \$98,582.02 is based upon the expropriation of 344 hectares of land, together with the improvements thereon comprising a portion of the Hacienda Clementina situated in the Municipality of Llera, State of Tamaulipas, Mexico, and the loss of use of said property for four years prior to its expropriation on July 20, 1940.

The American citizenship of the claimants, the ownership of the property, and the respective interests of the claimants in the property have been established (Agrarian Docket No. 94). The property in question was expropriated under a Decree of the Governor of the State of Tamaulipas dated July 8, 1940. Provisional possession was given on July 20, 1940.

The Commission has made a physical inspection of the property involved in the claim and has considered the evidence submitted with respect to the value of said property. The land is of superior quality and possesses a high degree of productivity when supplied with water. Through a well constructed system of irrigation canals, an abundant supply of water is made available to the land. In addition, the property has numerous improvements including administration buildings, workmen's houses and fences. The land

appears to be quite similar in character to the irrigated tract in the claim of Ross Elmer Neal (Series C-8) which this Commission inspected and which was valued at 675 pesos per hectare. The Commission is, accordingly, of the opinion that the property including all of the improvements has a value of 675 pesos per hectare, or a total of 232,200 pesos for the 344 hectares expropriated. At the rate of exchange (4.95 x 1) applicable at the time of expropriation this amounts to the sum of \$46,909.09.

In 1937 agrarian squatters invaded the claimants' land and cut off the water supply. The claimants made protest to the Government of Mexico but were not able to obtain any relief. As a result the claimants lost the productive use of their property for a period of four years. From a careful consideration of the evidence in the record, the Commission considers that an award of \$4,000.00 per year, or a total of \$16,000.00 would be appropriate compensation for said loss of use.

An award is accordingly made in favor of claimants in the sum of \$62,909.09, with interest, as provided by Section 7 of the Settlement of Mexican Claims Act of 1942, from July 20, 1940. The respective interests of the claimants in this amount are as follows:

To Nadine P. Miller	\$42,517.21
To the Estate of Eva D. Austin.....	524.24
To Irene E. Mathews	19,867.64

DECISION No. 87-E

AMC Docket No. 8. Claimant: William C. Taylor, Jr. Amount claimed: \$1,044,262.97. Amount awarded: \$424,983.00.

This claim in the amount of \$1,044,262.97 is before the Commission pursuant to the provisions of section 3(a)(4) of the Settlement of Mexican Claims Act of 1942. It is based on the failure of Mexico to provide protection for the mines and mining equipment of the claimant located in the State of Sonora, Mexico.

The American nationality of the claimant is established.

The claimant purchased the mining concessions and equipment of the Creston Colorada Company mine at a judicial sale in Hermosillo, Mexico on February 24, 1934 for a price of \$100,-658.13 (pesos). The Court approved the sale and on March 14, 1934, executed a deed in favor of the claimant. On April 28, 1934, the claimant organized a corporation known as Compania Minera Creston Colorada S.A., with a capital of 100,000 pesos divided into 100,000 bearer shares. The claimant is the owner of 99,996 of these shares. There is an allotment in his favor by the said corporation.

Prior to the purchase of the property by the claimant "gambusinos" or ore thieves had worked on the surface of the mining property. They had formed themselves into a "sindicato" and elected officers. In 1936 these "gambusinos" broke the locks on the shafts, seized the claimant's mining equipment and began to work all the areas of the mine above water level. They gouged out the rich veins of ore and threw their waste into the workings below, thereby destroying the pillars supporting the surface as well as the pillars surrounding the shafts. All this was done in total disregard of the rights of the owner who was refused access

to his properties. To treat the ores thus unlawfully removed, the "gambusinos" built numerous small ball mills for grinding the higher grade ores. They also created a profitable business by selling ores they could not treat, to ore buying agencies in Hermosillo. The materials used by them in these crude plants were stolen from claimant's warehouse.

In 1936 claimant invoked the aid of the United States Government against the aforesaid action of the "gambusinos" and our Government in turn requested the Government of Mexico to provide protection to the claimant's property. The Government of Mexico made numerous investigations of the activities of the "gambusinos" on the claimant's property, all of which showed that said "gambusinos" were illegally working on the claimant's property and causing great damage to it. Despite the fact that the Government of Mexico was thus fully informed as to the activities of the "gambusinos," and although it issued an order dated February 10, 1937 prohibiting their operations, it took no effective action to remove them from the claimant's property. In a report to the Federal Department of the National Economy dated January 31, 1939, one of its own engineers, after reporting on damage to the property said:

"It is important to call the attention of the Department to the fact that none of the orders and decisions of the Department and of the State Government have been complied with by the Union of Miners and Gambusinos."

The evidence submitted establishes that the Government of Mexico failed to provide protection to claimant's property although it was fully informed as to the illegal activities of the "gambusinos" and was repeatedly requested to remove them.

It is a recognized principle of international law that a Government is required to provide protection for the persons and property of aliens inside its borders. Hackworth Digest of International Law III (1943), p. 630 *et seq.* The failure to provide this protection in a degree at least equal to the minimum standard prescribed by international law, constitutes a denial of justice. Even where the acts of private individuals or groups of individuals are concerned, if the attention of a State is called to the unlawful acts of such persons, and the probability of such acts resulting in injury to the persons or property of aliens, and such State fails to provide protection, it shall be liable for the damage resulting from said unlawful acts. Hackworth op. cit. V pp. 654 *et seq.* Hyde International Law (1945) II, p. 937, *et seq.* Borchard, The Diplomatic Protection of Citizens Abroad, p. 217. Thus in a letter dated May 22, 1929, the Secretary of State of the United States expressed the following views:

"... where the act of private persons complained of is only one in a series of similar acts, the repetition, as well as its open and notorious character, raises a presumption of knowledge on the part of authorities which may raise State responsibility."

The claimant has submitted extensive evidence as to the damage to the property. The items of claim are formulated as follows:

(a) The net value of the ores above the first levels, stolen or made unavailable by caving, because the claimant had on hand machinery and equipment to extract and mill such ores, with but small additional capital investment, had he not been prevented from doing so by causes herein stated	\$832,315.72
(b) The value of destroyed machinery and equipment.....	148,917.70
(c) Claimant's expenditures, which would have been unnecessary had it not been for the acts complained of, with the deduction of the amount paid as taxes, \$41,668, less \$6,124.45	35,538.55
(d) Claimant's services, rendered without benefit to himself or to the corporation, but made necessary by such acts.....	31,400.00
Total loss from causes stated	1,048,171.97
Less amount received as royalty by the corporation from 1934 to October 1, 1940	3,909.00
Total amount of claim	1,044,262.97

Items (c) and (d) are not proper items of claim before this Commission and must be disallowed.

The evidence as to the other damages consists chiefly of the reports and appraisals of three prominent mining engineers, Richard Atwater, Jr., Howard H. Fields and Hugh Wright. The conclusions reached by these three appraisers with respect to the two principal items of claim as set out above are as follows:

	<i>Net value of ores stolen or made unavailable by caving</i>	<i>Value of machinery and equipment destroyed by "gambasinos"</i>	<i>Total</i>
Atwater.....	\$1,200,000.00	\$148,917.70	\$1,348,917.70
Fields.....	893,355.00	53,500.00	946,855.00
Wright.....	832,315.72	(¹)	832,315.72

¹Not appraised.

This Commission obtained an independent report and appraisal with respect to the property by R. W. Tighe a United States mining engineer. He estimates the damage as follows:

I. Loss of possible profit from known ore reserves lying above water level in all mines, which said ore reserves are those that would have yielded a net recoverable value in excess of total costs	\$224,764.00
II. Damage to working shafts not including Gran Central shaft	138,000.00
III. Machinery, equipment and supplies damaged or stolen.....	123,677.70
IV. "Virgin Ore"—extension of the Creston vein system to the east of existing mine workings.....	166,000.00
Total Damage	652,441.70

Further estimates have been submitted by Mr. Fields as to the amount of ore stolen by the "gambusinos." He states that based on the amount of ore known to have been shipped to El Paso and Cananea that the total amount stolen during the period from June 1936 to October 6, 1940 was between 50,000 and 75,000 tons.

After a consideration of all the evidence the Commission has determined that the amount of damage suffered by the claimant is as follows:

Ore stolen from the claimant's mine.....	\$250,000.00
Damage to the mine	75,000.00
Loss of and damage to machinery and equipment.....	100,000.00
	425,000.00

The claimant is entitled to 99,996/100,000 of this amount or \$424,983.00.

Accordingly the Commission makes the following award :

To William C. Taylor, the principal sum of.....\$424,983.00 without interest.

DECISION No. 73-E

AMC Docket No. 9. Claimant: Oscar M. Henking. Amount claimed: \$7,800.00. Amount awarded: \$1,000.00.

This claim in the amount of \$7,800.00 is before the Commission pursuant to the provisions of section 3(a) (4) of the Settlement of Mexican Claims Act of 1942. It is based on loss of use of claimant's property, consisting of 17 hectares of land situated in the City of Altamira, State of Tamaulipas, Mexico.

Claimant, an American national, acquired said property on or about January 4, 1909, for a consideration variously stated as being 500 pesos, \$1,600.00 and \$2,200.00. The consideration recited in the deed was 500 pesos. Some improvements were added to the land by claimant. After occupying said property for about two years after its acquisition, claimant was compelled to leave as a result of the revolutionary conditions then prevailing in Mexico. His land has been occupied by squatters continually since that time.

It appears from the record that the squatters continued to occupy claimant's property with the knowledge of the Mexican authorities, who did nothing to remove them, and that the Governor of the State of Tamaulipas participated in negotiations for the attempted purchase by the squatters of the land from claimant in December, 1930. The evidence in the record shows, furthermore, that claimant communicated with the State Department of the United States requesting assistance in connection with the foregoing situation and that thereafter the presence of squatters on the claimant's land was specifically called to the attention of the Mexican Governor of the State of Tamaulipas by the Government of the United States through its consular representative in that State with the request that the Governor order the vacating of claimant's land. No action was taken, however, to remove the squatters from the property. In the opinion of the Commission this evidence establishes the international responsibility of the Mexican Government for its neglect and failure to remove the squatters from claimant's land. The action of the Mexican authorities makes it apparent that resort to the Courts would have proved unavailing and that a judgment would have been unenforceable.

Claimant seeks indemnification for the loss of use of the land here involved from January 1, 1927, to August 6, 1940, in the amount of \$7,800.00. The evidence discloses that claimant at one time offered to sell his land for \$300.00, and at another for \$540.00. While we recognize that these offers to sell under economic conditions existing at that time are not a true criterion of normal value, we nevertheless find no basis for the large claim. The Commission considers that \$1,000.00 would be a fair and just com-

asserted for loss of use thereof. Upon the entire record, the Compensation for the loss of use of the 17 hectares of land.

Accordingly, the Commission awards to the claimant, Oscar M. Henking, the principal sum of \$1,000.00 without interest.

DECISION No. 46-E

AMC Docket No. 10. Claimant: Mrs. Virginia L. Butler, Administratrix, Estate of James E. Butler, deceased. Amount claimed: \$7,500.00. Amount awarded: \$1,965.00.

This claim is before the Commission pursuant to the provisions of section 3(a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the expropriation of 300.62 hectares of land known as El Camaron, situated in the Municipality of Tuxtepec, State of Oaxaca, Mexico, by Presidential Decree dated September 25, 1940.

The American nationality of James E. Butler, as well as that of the present claimant, is satisfactorily established. The ownership of the land involved and its expropriation are likewise satisfactorily established.

Claim is made for \$7,500.00 but adequate evidence to support such valuation has not been submitted. The land was purchased in 1910 at a cost of 3,930.62 pesos, equivalent at that time to approximately \$1,965.00. The record contains no showing that improvements were ever made on the land. Claimant describes it as virgin soil covered by virgin forests. In the absence of more satisfactory evidence as to value, it appears that the amount paid for the property is a fair measure of its value at the date of expropriation.

An award is accordingly made to Mrs. Virginia L. Butler, Administratrix of the Estate of James E. Butler, deceased, for the sum of \$1,965.00, with interest from September 25, 1940, as provided in Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 68-E

AMC Docket No. 11. Claimant: Wade Herren. Amount claimed: \$4,093.00. Amount awarded: \$2,000.00.

This claim in the amount of \$4,093.00 is before the Commission pursuant to the provisions of section 3(a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon loss of livestock and other personal property in the course of the so-called "Escobar" revolution during the spring of 1929. The history of this revolution and a statement of the principles of law applicable thereto are set forth in the decision of this Commission in the claim of *Jesse J. Simpson, et al.* (Series E—Decision 63). This Commission has determined that Mexico is not liable for the acts of rebel forces during the course of the "Escobar" revolution but that it is responsible for the acts of the federal forces.

It is necessary, therefore, only to apply these established principles to the facts of the present case. The nationality of the claimant and his ownership of cattle and personal property is established.

The evidence in the record in this claim, as in all other claims arising out of the "Escobar" revolution, indicates that the rebel troops crossed the lands of the claimant and that they were pursued by federal troops. In the circumstances the Commission adopts the view in the instance of the present claim, as it has in

that of all others based upon loss or destruction of personal property as a result of the "Escobar" revolution, that the conditions surrounding the suffering of any losses shown to have been sustained were such as to give rise to the conclusion that said losses were attributable to acts of both revolutionary and federal troops. The determination of the amount of loss attributable, respectively, to said revolutionary and federal troops is difficult of ascertainment. Upon a consideration of the record herein and of all other claims growing out of the "Escobar" revolution, the Commission concludes that a fair estimate of the losses sustained by claimant for which the Mexican Government should be held liable under the rule of liability heretofore announced herein is the sum of \$2,000.00.

Accordingly, an award is made to Wade Herren in the sum of \$2,000.00, with interest from June 1, 1929.

DECISION No. 91-E

AMC Docket No. 12. Claimant: Vernie L. Medlin. Amount claimed: \$11,000.00. Amount awarded: \$6,338.00.

The claimant herein alleges that he has suffered damages amounting to \$11,000.00, resulting from the expropriation of 400 hectares of land under a Presidential Decree dated February 23, 1938, and because of the severance damage to the balance of 600 hectares of land. Such property is part of the Blalock Colony in Tamaulipas, Mexico.

This is one of a number of claims resulting from expropriations of land located in the Blalock Colony. In 1903 the Blalock Mexico Colony Company was organized and it purchased a hacienda comprising some 70,000 hectares of land. The hacienda consisted of temporal land. At the time of purchase, it was undeveloped, partly wooded and lay in a long valley almost entirely surrounded by mountains. The soil was rich, and although there were occasional dry years, the rainfall was usually sufficient. The climate and soil were adapted to agriculture and horticulture. The boundaries of the original hacienda in many places ran along the high ridge of the mountain ranges so that the outer portion of the property was rough and adapted only to grazing.

The hacienda was surveyed and platted by the company, and such plat was recorded in Mexico, thus establishing its own land descriptions. A townsite was also laid out in this plat, and the town lots and farm land were sold to American settlers. Most of such sales occurred between 1908 and 1910.

At the beginning of the revolutionary period (1910-1920), it was reported that about 500 Americans were living on such lands and that most of them left the country in 1912 on advice of United States Government authorities. After said revolutionary period many returned but others sold their lands.

The deeds from the Blalock Mexico Colony Company conveying title in the aforesaid lands to individual Americans were drawn up on special forms containing a description of the individual tracts conveyed according to the plat which had previously been recorded. These deeds were in turn recorded by the grantees and, at least in the beginning, they were recognized as good conveyances by the Mexican authorities. When expropriations were

commenced under the Agrarian Law, the title owners protested such action on the ground that their holdings were exempt under the law by reason of the fact that they were "small holdings." Some of the applications for ejidos were at first denied by the authorities. Later, however, the Mexicans alleged that the transfers to Americans from the Blalock Mexico Colony Company were not bona fide transactions but were subterfuges to evade the provisions of the Agrarian Law. Embodied in later expropriation decrees was a finding to the foregoing effect. In making such a finding, the Mexican authorities completely ignored the fact that the conveyances from the company had been executed and recorded a number of years prior to the adoption of the Constitution of 1917 and prior to the enactment of the Agrarian Laws.

Many expropriation decrees did not name the actual owner of the land expropriated but merely alleged the ownership thereof to be in the name of the Blalock Mexico Colony Company. Other decrees were not published at all. Some were published only after great delays. Claimants have supplied affidavits to establish the loss of their property by expropriation and Consular agents of the United States have furnished official plats both of the colony and of the Mexican agrarian authorities showing the exact location of such expropriations.

By reducing such plats to the same scale, where necessary, the Commission has been able to compare them with each other and with the decrees of expropriation, and to ascertain the extent of loss suffered by the claimants under such decrees.

The claimant in the instant claim, Vernie L. Medlin, has furnished satisfactory evidence to establish his American nationality at all times pertinent to the claim. He has also established his ownership of the land involved herein. It is alleged by claimant that 400 hectares of land have been expropriated, and that 600 additional hectares were damaged as a consequence of such expropriations. This contention is supported by affidavits of other witnesses. A careful study of the various plats indicates that the figures are correct and that the expropriation of claimant's land was effected by the Presidential Decree of February 23, 1938.

The said decree of expropriation has not been published, according to the record. An authenticated copy thereof has however been filed in another claim (Pettus claim, Agrarian Docket No. 255). Claimant contends that he never received any notice of such expropriation until he was arrested for taking down some fencing on his property. When arraigned in court he was told that his land had been expropriated and that he no longer owned such fence. Upon restoring the fence, he was released from custody without prosecution but he did secure a statement signed by the judge of the Court on June 10, 1940, that the land had been expropriated. For the reasons set forth in the Lamm claim (Decision No. 79, Series E), the Commission holds that the claim arose within the meaning of the Settlement of Mexican Claims Act of 1942 on June 10, 1940, when claimant learned of the expropriation. The claim therefore comes within the provisions of Section 3 (a) (3) of the Act and is within the jurisdiction of this Commission.

The Commission, after a careful study of the evidence submitted in the instant claim, as well as the evidence submitted in other claims involving land in the Blalock Colony, finds that a fair and reasonable valuation of claimant's land would be 50 pesos per hectare for tillable land, 10 pesos per hectare for valley pasture land, and 5 pesos per hectare for mountain pasture land. It appears also to be fair to assess the severance damage at 50% of the value of the land. The losses sustained by claimant may therefore be computed as follows:

	<i>Pesos</i>
400 hectares tillable land at 50 pesos	20,000
400 hectares pasture at 10 pesos, 50 per cent damage.....	2,000
200 hectares mountain pasture at 50 pesos, 50 per cent damage.....	500
	22,500

The loss of title having occurred on February 23, 1938, when the Presidential Decree was signed, the valuation must be converted into dollars at the rate of exchange prevailing on that date (3.55 x 1). This amounts to \$6,338.00.

The claimant herein, Vernie L. Medlin, is accordingly awarded the principal sum of \$6,338.00, with interest thereon from the date when the claim accrued, to wit, June 10, 1940, as provided in Section 7 of the Act.

DECISION No. 83-E

AMC Docket No. 13. Claimant: Estate of Cora Lee Sturgis. Amount claimed: \$130,417.36. Amount awarded: \$7,247.78.

This claim in the sum of \$130,417.36 is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

It is predicated upon the expropriation of 1,234.75 hectares of land being all of the farm "La Blanca" situated in the Municipality of Copainala, District of Mezcalapa, State of Chiapas. This property was purchased by Dr. Charles T. Sturgis in the years 1900 and 1906. Upon his death in 1931 this property passed to his wife Cora Lee Sturgis under the terms of his will which was duly probated. Cora Lee Sturgis thereafter died. Her sister Katherine K. Pinkston was named as executrix of her estate by the Probate Court of Shawnee County, Kansas. On December 28, 1945, said Court approved her final account as executrix, granted her discharge as such and entered an order adjudicating the entire estate of Cora Lee Sturgis to Katherine K. Pinkston as sole beneficiary. She thereby became the owner of the present claim.

There were three expropriations from which this claim arose all being based on decrees issued by the Governor of Chiapas on May 24, 1940. The poblados to which the lands were dotated and the classification of said lands were as follows:

<i>Poblado</i>	<i>Urban and temporal</i>	<i>Grazing and Monte</i>	<i>Total</i>
Jose Maria Brindis.....	242	129.40	371.60
Cinco de Mayo.....	129.60		129.40
Campeche.....	20.75	713	733.75
	<u>392.15</u>	<u>842.60</u>	<u>1,234.75</u>

The Commission finds that 70 pesos per hectare for the urban and temporal lands and 10 pesos per hectare for the pasture land is a fair and reasonable valuation as of the date of expropriation making a total of 35,876.50 pesos. At the rate of exchange (4.95 x 1) prevailing on May 24, 1940, this is equivalent to \$7,247.78.

Provisional possession was not given until October 22, 1940, hence interest should commence to run from that date.

An award is accordingly made to Katherine K. Pinkston for the sum of \$7,247.78, together with interest from October 22, 1940, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 1-E

AMC Docket No. 14. Claimant: Black Hawk Protective Association, The Gulf Coast Plantation Company, and Associated Tropical Plantation Company. Amount claimed: \$4,951,280.00. Award: disallowed.

This is a claim for property losses alleged to have resulted from the expropriation of land of the Tabasqueño and Filisola plantations, in the vicinity of Minatitlan, Veracruz, Mexico, and from seizure and destruction of property on the said plantations as a result of acts of Mexican soldiers and rebels from 1916 to 1918.

The persons who submitted the claim have failed to prove their authority to present it on behalf of the members of the Black Hawk Protective Association, hereinafter referred to as the Association, or of the two companies. The claim is unsupported by proof of nationality, ownership of property, extent of claimants' interest, or amount of damages.

Furthermore, with respect to the part of the claim relating to losses attributed to acts of Mexican soldiers and rebels, no proof has been submitted to show that such acts caused the alleged losses.

Two Montana corporations, The Gulf Coast Plantation Company and the Associated Tropical Plantation Company, sold what they called "Bond for Deed and Acreage Contract" hereinafter called "bond." It was in effect a contract for conditional sale of real estate to persons who made an "application" therefor. The former company issued "bonds" for the "Tabasqueña Tract," the latter for the "Filisola Plantation." The phraseology was similar for both companies. The "bond" provided that the company was to deed, after 10 years, a certain number of acres to the applicant provided all payments were met; that, if he failed to meet all payments, the company would keep any payments made as liquidated damages; that the company would have a right to cultivate the land for 10 years after the first crop of bananas was planted, the applicant being entitled to a certain amount of profits; and that the holder of the "bond" was to have "no legal or equitable title" to the land "or to any interest therein," until the entire purchase price thereof shall be fully paid."

In an affidavit of May 12, 1939, concerning the status of the Association, Joseph O. Williams states:

"On March 3rd 1923 a group of Land Owners [holders of "bonds"], and stockholders in the Associated Tropical and the Gulf Coast Plantation Companies and of the Tropical Holding Company (Cia Agrícola de Filisola) assembled for

the purpose organizing a Foreign Real estate Partnership (The Black Hawk Protective Ass'n.)”

The affidavit of claim was executed by L. E. Eickelberg, as counsel for the Association. It was also signed by Williams as secretary of the Association. There is no allegation or evidence as to the exact date when the alleged officials of the Association, Elmer LeRoy Mayes, President, and Williams, Secretary, were elected. Williams states “We have gained the services of L. E. Eickelberg as Counsel.” While it is assumed that by “WE” it is intended to convey the impression that the Association authorized the presentation of the claim on its behalf, there is no proof that is passed any resolution authorizing its officers or Eickelberg, as counsel, to present a claim on its behalf. Nor is there proof of the date of any such resolution or of the names of any members voting in favor thereof.

Williams has given what purports to be a list of members of the Association at the time the alleged claim arose. There is no convincing evidence to show that those persons were actually members of the Association, that they continued to be such, or that they authorized the presentation of this claim on their behalf.

The power of attorney to Eickelberg for the presentation of the claim on behalf of the Gulf Company is signed by A. E. Nicholson as president and Williams as secretary. This company was allegedly organized in 1909 for a period of 20 years and the last annual statement is said to have been filed by it in 1919 or 1920. There is no proof that any meeting took place since then or that Nicholson and Williams have a right to treat themselves as president and secretary, respectively, about 20 years later. The lack of proof as to Williams’ right to assume the title of secretary of this company is also significant in connection with his assumption of a similar title with respect to the Association. Nor is there any proof of a resolution by the company authorizing Nicholson or Williams to give a power of attorney for the presentation of a claim on behalf of the company.

The power of attorney to Eichelberg for the presentation of a claim on behalf of the Associated Tropical Plantation Company is signed by E. L. Mayes as president, and B. Downing as secretary. It is alleged that this company was incorporated in 1911 for a period of 20 years and that the last annual statement was filed by it in 1917. There is again no evidence showing that any meeting took place since then or that Mayes and Downing have a right to treat themselves as president and secretary, respectively, about 22 years later. The unproved right of Mayes to assume the title of president of this company reflects also, in view of the record of this case, on his right to assume a similar title with respect to the Association. There is no evidence of any resolution authorizing Mayes or Downing to give a power of attorney for the presentation of this claim. Furthermore, no evidence has been submitted to show when, as alleged, the companies went out of existence, or who, if this be the case, would hold a right, under applicable provisions of law, to present a claim on their behalf.

Even if the claim had been presented by properly authorized persons, it would have had to be disallowed because of lack of

proof of American nationality. The Association is not a legal entity. The American nationality of its members must be proved but it cannot be held that this has been done when there is not even adequate evidence to establish the number of holders of "bonds" represented by the Association and the extent of interests sought to be protected by it. Eickelberg states with respect to the Tabasqueña Plantation that the Association holds all the "findable Bonds." He contends that this plantation belongs to "the land buyers to the extent of the Bonds." The elasticity of the word "findable" is obvious. Williams states that "no one seems to know how high in the thousands" "bonds" were issued, and adds: "As far as we are able to learn all the available Bonds are in the hands of the B.H.P.A. [the Association] the rest seem to be lost, traded for Tropical Holding stock or destroyed." If "no one" knows how many "bonds" were issued, Williams cannot obviously know what happened to bonds not in the hands of the Association. In another statement Eickelberg asserts that many persons "who have filed their Bonds and Stock" are not members of the Association "but come under our claim for damages." Under the circumstances, it is not possible to determine who may be properly represented by the Association, much less what their nationality might be. Nor is there adequate evidence to prove the American nationality of the stockholders of the two companies.

There is also lack of proof of ownership of the two plantations in question and of the extent of claimants' interest.

On Page 2 of Eickelberg's affidavit of claim it is stated:

"By virtue of the breadth of their holdings and affiliations, the Black Hawk Protective Association lay claim to *all of the land* in the Tabasqueña and the Filisola Plantations . . ." (Italics inserted).

The Association itself has no title. It would have no greater right than its members. No conveyance of title to the members by the companies involved has been proved. There is not even an allegation, much less proof, as to how much, if any, of the property in question may have been conveyed to members of the Association. There is no evidence as to any assignment of title from the members to the Association. It is not shown that holders of "bonds" acquired any title under them. As already noted, title to holders of "bonds" was to be given by the Gulf Company and the Associated Tropical Plantation Company. But there are no title deeds or other satisfactory evidence to show that these companies were the owners of the Tabasqueña and Filisola plantations, respectively. With reference to the former plantation Eickelberg's affidavit of claim states that "Judge Pierce" had the property recorded in his name. While, at the time of the expropriation of at least part of this plantation, the *Diario Oficial* listed the plantation as belonging to William Pierce, the muniments of title normally required to show that ownership thereof was vested in him are not in the record. We have called attention in our decision of *Pennsylvania Plantation Company*, Series B, Decision No. 23, that assertions in decrees of expropriation with reference to ownership of property were not regarded either by the Mexican Government or by the American Section of the Agrarian Claims Com-

mission as satisfactory proof of ownership. While it is alleged that Pierce organized the Gulf Company in order to sell "bonds," it has not been proved by what arrangement the company was contracting to sell land. It may be that he had an agreement with the company but such agreement is not shown. Nor is there proof that the company had title to the property. Furthermore, it has not been established how many bonds were sold or what would be the extent of any property interest of the company or of the holders of "bonds."

There is also no proof of ownership of the Filisola Plantation by the Associated Tropical Plantation Company. The decree of expropriation refers to the Compañía Agrícola Filisola, S. A., as the owner. The evidentiary value of such assertions has been discussed above. In what purports to be a copy of a letter of April 27, 1939, from the Tropical Holding Co., Inc. to Eickelberg it was stated that that company held all the stock in the Agrícola Company. This exhibit is supposed to show the claim of the Tropical Holding Co. to this plantation. But the evidence in support thereof is not adequate. Furthermore, even if this evidence were sufficient proof of stock holding, this possible basis of claim would be excluded since that company has not granted a power of attorney to Eickelberg to present any claim on its behalf. Nor does the record contain proof that that company is an American corporation.

It is alleged in Eickelberg's affidavit of claim that the Filisola plantation was purchased by the Associated Tropical Plantation Company from an English company. The affidavit then goes on to say that Exhibit 2-B shows that one Kemper and one Berg (Burge, see page 5 of Exhibit 2B) had taken over the contract and held the English company's rights. On the other hand, in the above-mentioned letter of the Tropical Holding Co. it is stated that "Burge does not hold any interest in the company (presumably the Agrícola Company)." In what purports to be an excerpt from a letter of April 1, 1921, by J. H. Dickman, it is stated that the writer thereof had "the undisputed title to the property known as FILSOLS property." There are no title deeds in the name of an "English Company," Kemper, Burge, or Dickman. In a notice to clarify title, signed by Eickelberg, it is stated:

"the Filisola Plantation which is inscribed in the Grand Register to Mr. Dickman, J. H. (Compania Agrícola de Filisola) which is owned by the Tropical Holding Company of Mountain Lake, Minn. is the property of all the stockholders of the Tropical Holding Co. except what is jointly the property of the Black Hawk Protective Association of Waterloo, Iowa, and the Tropical Holding Co. of Mountain Lake, Minn."

As noted, even if there were proof that the Tropical Holding Co. owned the stock of the Agrícola Company, the claimants would have no right to present any claim on behalf of the Tropical Holding Co.

The allegations as to the amount of damages are such as to give no indication of any actual total losses, much less of any losses that may have been sustained by any particular holders of "bond" or any company. In Eickelberg's affidavit of claim the total amount claimed is described as follows:

- (a) \$200,000 for loss of permanent improvements (by acts of Mexican soldiers and rebels) ;
- (b) \$3,333,200 for loss of productive possibilities figured at the rate of "20 thousand pesos profit on 60 acres or 333.33 pesos (\$166.66) per acre for 20,000 acres";
- (c) \$1,418,080 for loss of oil royalties.

This enumeration of articles is then followed by this statement:

"This gives a total of 20,000 acres a production value \$4,951,280. Or for each acre expropriated in U. S. gold, \$475.64; add to this the original cost of the land, \$200.00, or a total of \$675.00 for each acre expropriated."

There is no evidence to prove any of the items just mentioned. There is no proof as to the cost of any real or personal property. In Eickelberg's affidavit of claim the following statement is made:

"The price paid for the Plantations by the companies in [sic] immaterial to this discussion for under a profit system of land transfer so much is concealed that little need be explained."

Nor is there proof of the amount of the alleged profits or that such profits would not be speculative. The same lack of proof exists as to the alleged loss of oil royalties. Some evidence has been submitted to show expropriation of about 1,498 hectares. As to an additional 1,478 hectares no evidence whatsoever is found in the record. The total alleged expropriation is increased to about 3,882 hectares by (a) counting an item of 886 hectares twice, once for the Governor's decree and once for the Presidential resolution affecting the same land, and (b) by counting as 59 hectares an expropriated area of 39 acres.

In a later affidavit of claim the amount claimed is augmented to over \$10,000,000, the basic sum of ten million being predicated on the following allegation:

"A partial destruction occurred in the wiping out of the state of cultivation under which the Plantations had been placed. We consider the loss to our investment in not being able to market our crops, keep the Plantations from growing wild, and extending operations in agriculture and oil to the extent of about \$10,000,000.00."

No evidence is submitted to prove the allegation just quoted. Presumably part of the loss is due to acts of soldiers and rebels during the revolutionary period. As already noted, there is no proof of such acts. In this connection attention may be called to a claim against Mexico presented to the Special Mexican Claims Commission by The Gulf Coast Plantation Company, Associated Tropical Plantation Company and the Tropical Holding Co., Inc., for alleged property losses on the same plantations involved in the instant case. Special Mexican Claims Commission (1940) 114. In disallowing that claim the Commission pointed out that the record did "not contain satisfactory proof of the ownership and value of the property allegedly lost, nor does it contain adequate proof of losses suffered on either plantation through acts of forces." In that claim, contentions had also been filed with the Commission by the Black Hawk Protective Association. In disallowing this separate claim for lack of jurisdiction, the Commission pointed out

that it was also "unsupported by proof of loss or damage presumably resulting from acts of armed forces creating liability under the Convention of September 10, 1923."

The claimants have not proved their claim, and it is, therefore, disallowed.

DECISION No. 14-E

AMC Docket No. 15. Claimant: E. D. Tate. Amount claimed: \$1,000.00. Award: disallowed.

This claim, in the amount of \$1,000, is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon the allegation that claimant has been "informed and believes" that the Mexican Government has "appropriated" his land, consisting of 20 hectares in Section 97 of the Palmito del Verde Plantations, situated in the Municipality of Escuinapa, State of Sinaloa, Mexico.

Claimant has submitted no evidence to establish his American citizenship nor has he submitted any proof that his land has been expropriated by the Mexican Government or that said Government has taken any wrongful action with respect to his property.

The claim is therefore disallowed.

DECISION No. 67-E

AMC Docket No. 16. Claimant: James H. Jeffers. Amount claimed: \$56,880.00. Amount awarded: \$10,000.00.

This claim in the amount of \$56,880.00 is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon loss of livestock and other personal property in the course of the so-called "Escobar" revolution during the spring of 1929. The history of this revolution and a statement of the principles of law applicable thereto are set forth in the decision of this Commission in the claim of *Jesse J. Simpson et al.* (Series E—Decision No. 63). This Commission has determined that Mexico is not liable for the acts of rebel forces during the course of the "Escobar" revolution but that it is responsible for the acts of the federal forces.

It is necessary, therefore, only to apply the foregoing principles to the facts of the present case. The nationality of the claimant and his ownership of cattle, horses and personal property is established. The evidence in the record shows that both rebel and federal forces crossed the claimant's ranch during the course of the "Escobar" revolution. They killed livestock and horses and carried away personal property belonging to the claimant. This claim, as above indicated, is for \$56,880.00. In 1932, however, claimant filed a statement of his losses during the "Escobar" revolution with the Department of State, itemized as follows:

350 stock cattle at \$50 per head.....	\$17,500.00
20 bulls at \$150 per head.....	3,000.00
6 saddle horses at \$40 per head.....	240.00
1 span of mules at \$100 a span.....	100.00
7 miles wire fence, \$157 the mile.....	1,100.00
Damage to house at Ramos.....	400.00

22,340.00

Less payment by officers of Mexican Government in April, 1929..

100.00

21,240.00

The evidence as to the amount of damage inflicted by the federal and rebel forces, respectively, is conflicting and lacks definiteness. The difficulty of precise proof as to the allocation of the loss attributable, respectively, to acts of unsuccessful revolutionists and to those of federal troops is, however, recognized by the Commission. As above stated, the Government of Mexico is liable only for the damage committed by the federal forces. Upon a consideration of the record the Commission is of the opinion that a fair estimate of the losses caused by the federal forces is \$10,000.00 and that claimant is entitled to indemnity therefor.

Accordingly, an award is made to James Jeffers in the sum of \$10,000.00. with interest from June 1, 1929.

DECISION No. 79-E

AMC Docket No. 17. Claimant: Estate of Lewis Lamm. Amount claimed: \$42,207.45. Amount awarded: \$22,965.94.

This claim is for losses resulting from the alleged expropriation of 16,462.46 hectares of land, pursuant to the following decrees:

<i>Date of decrees</i>	<i>Area expropriated Hectares</i>
December 15, 1937 (Presidential).....	5,276.60
February 23, 1938 (Presidential).....	2,799.46
November 15, 1939 (Presidential).....	500.00
June 12, 1940 (Presidential).....	1,714.00
June 19, 1940 (Presidential).....	5,578.00
December 20, 1939 (Gubernatorial).....	600.00
	16,462.46

The American citizenship of claimants and the ownership of the land in question is satisfactorily established by evidence filed with two claims before the Agrarian Claims Commission (Agrarian Docket Nos. 41 and 43).

None of these alleged expropriations was included in the two claims filed with the Agrarian Claims Commission as aforesaid. It seems clear that the last four items above mentioned clearly fall within the jurisdiction of this Commission and that claimants are entitled to indemnification for losses sustained by reason of such expropriations.

The first two items are based, as aforesaid, upon Presidential Decrees dated December 15, 1937, and February 23, 1938, respectively. These decrees were published, respectively, under dates of March 23, 1940, and May 11, 1940.

Under section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942, this Commission has jurisdiction over—

“Agrarian claims which arose between December 1, 1938 and October 6, 1940, inclusive, and which were not filed with the Agrarian Claims Commission on or before July 31, 1939.”

If the claim for these two items arose, within the meaning of the above-quoted section, on the dates when the decrees were signed by the President of Mexico, this Commission is without jurisdiction. The claimants, on the other hand, contend that claims for such losses arose on the dates of publication of the decrees, which would bring the two items within the purview of section 3 (a) (3) above quoted.

The Convention between the United States and Mexico, signed on November 19, 1941, settled all agrarian claims.

"which arose subsequent to August 30, 1927 and prior to October 7, 1940."

By the terms of such convention, Mexico has been absolved of any further liability for claims which arose between such dates. Claimant, therefore, must be indemnified, if at all, from the fund created by such convention.

In enacting the Settlement of Mexican Claims Act of 1942, Congress defined the jurisdiction of this Commission as to new claims in terms somewhat different from those of the Convention. In paragraphs (1) and (3) of section 3 (a) of the Act, jurisdiction is given for "claims which arose between" certain prescribed dates, while in paragraph (2) the terms used were claims which are "predicated upon provisional expropriation decrees signed between" certain prescribed dates. It would appear, therefore, that Congress did not necessarily intend in all cases to limit claims to those which were predicated upon decrees signed within certain limits, but to provide a certain flexibility of construction of terms in the clauses defining jurisdiction.

The hearings before the subcommittee which considered this legislation clearly indicate that it was the intent of Congress that agrarian claimants who did not file their claims with the Agrarian Claims Commission should not share in the fund unless their claims arose at such a late date as to make it difficult or impossible to file them by the date prescribed.

It further appears clear that, although the Agrarian Claims Commission had jurisdiction to determine claims which arose prior to July 31, 1939, Congress, in the paragraph 3 (a) (3) above quoted, clearly intended this Commission also to have jurisdiction of new claims which arose between December 1, 1938, and July 31, 1939. It appears thus to have been within congressional contemplation that although claims which arose between December 1, 1938, and July 31, 1939 could have been filed with the Agrarian Claims Commission, they are not barred from consideration by this Commission if they were not so filed.

The record clearly shows that the property in question was not affected by any provisional decree and that provisional possession was not given at any time prior to the signing of the Presidential Decree. Claimants contend that they had no knowledge of the signing of such decrees until their publication. The publication of the decrees, which gave to all concerned constructive notice of the existence of said decrees, occurred too late for claimants to have included these two items in either of the two claims, composed of a number of items of a similar nature, which were filed with the Agrarian Claims Commission. The fact that claimant did not include these two items in either claim with that Commission raises a strong presumption that knowledge on the part of claimants as to the loss for these two items was lacking. No evidence exists in the record that would indicate that claimants did have such knowledge. In the absence of such knowledge or of any facts from which such knowledge could be presumed, this Commission holds that the two items of claim involved herein arose at the time of the

publication of the decrees on March 23, 1940, and May 11, 1940, respectively, and that they are, therefore, within the jurisdiction of this Commission. Since claimants were divested of title under the provisions of the Mexican law at the time the Presidential Decrees were signed, the dates of such Presidential Decrees shall determine the dates for valuation purposes. Interest on the awards shall run from the time the claim arose.

Upon the question of value, claimants rely on the evidence furnished in connection with the claims previously filed with the Agrarian Claims Commission. Below are listed the various decrees, the number of hectares expropriated, a description of the land, the values and rate of exchange prevailing at such times. The first two items are for expropriations in the State of Puebla and the other four items are for land in the State of Oaxaca. After carefully considering and weighing the testimony the Commission finds the following values to be just and reasonable:

<i>Date of decree</i>	<i>Number of hectares</i>	<i>Description</i>	<i>Peso value</i>	<i>Pesos</i>	<i>Rate of exchange</i>	<i>U. S. Cy. dollars</i>
2/11/40..	600	Grazing.....	5	3,000.00	4.95	\$606.06
11/15/39.	500	Grazing.....	5	2,500.00	4.95	505.05
12/15/37.	64.4	Temporal....	50	3,220.00	.....	.....
	792.4	Grazing.....	2	1,584.80	.....	.....
	355.2	High timber..	10	3,552.00	.....	.....
	4,064	Low timber..	5	20,320.00	.....	.....
	5,276			28,676.80	3.55	8,077.97
2/23/38..	25.2	Irrigated....	109	2,520.00	.....	.....
	2,404.86	Low timber..	5	12,024.30	.....	.....
	116.4	Grazing.....	2	232.80	.....	.....
	253	High timber..	10	2,530.00	.....	.....
	2,799.46			17,307.10	3.55	4,875.24
6/12/40..	1,714	Grazing.....	2	3,428.00	4.95	692.53
6/19/40..	55	Irrigated....	100	5,500.00	.....	.....
	250	Temporal....	50	12,500.00	.....	.....
	4,033	Pasture.....	5	20,165.00	.....	.....
	1,235	Grazing.....	2	2,470.00	.....	.....
	5,573			40,635.00	4.95	8,209.09
						22,965.94

The Commission accordingly awards to the claimant herein, the Estate of Lewis Lamm, the principal sum of \$22,965.94, with interest thereon from dates of expropriations, as provided in the Settlement of Mexican Claims Act of 1942.

DECISION No. 122-E

AMC Docket No. 18. Claimant: Mexican Gulf Land and Lumber Company. Amount claimed: \$796,884.00. Amount awarded: \$190,710.43.

This claim in the amount of \$796,884.00 is before the Commission pursuant to the provisions of section 3(a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon the nullification of the claimant's title to 233,396 hectares of land located in the State of Campeche, and for severance damages to several

small tracts of land totaling 32,718.9 hectares which were adjacent to the larger tract.

The claimants herein, whose American citizenship is established, are the American shareholders of the Mexican Gulf Land and Lumber Company, a Mexican corporation. They own 10,960 shares of 11,000 shares outstanding and have an allotment from the corporation of 10,960/11,000 of any losses which may have been suffered by it.

The ownership of property in Mexico by the said Mexican corporation is established. The history of title to this land is set forth in the decision of this Commission in the claim of The Laguna Company, Decision No. 120—Series E. Said Mexican Gulf Land and Lumber Company on or about April 15, 1903, acquired by purchase 233,396 hectares of land of a tract known as the Vila tract. It also purchased several smaller tracts of an area of 32,718.9 hectares adjacent to the large Vila tract.

The title to the Vila land was nullified by a decree of the President of Mexico issued January 2, 1940. The contents of this decree and a summary of the litigation carried on by the present claimants and The Laguna Company with respect to such decree are set forth in the decision of this Commission in the claim of The Laguna Company.

Upon all the facts involved in this claim and the facts set forth in the decision in the claim of The Laguna Company, we find the liability of Mexico to be established. We are thus brought to the question as to the measure of damages. The property of the Mexican Gulf Land and Lumber Company constitutes one large tract. The land is covered chiefly with tropical jungle. It has a large growth of hardwood, which is principally mahogany and cedar. It also has Zapote trees from which chicle is derived. The Campeche Railroad of the Mexican Government runs north and south across the middle of the tract. The principal source of revenue of the company at all times has been the extraction of chicle.

In determining the value of the land at the time of the nullification of title on January 2, 1940, the Commission has examined the very extensive evidence filed by the claimant, which includes balance sheets and profit and loss statements reflecting claimant's operations from 1920 to 1944 inclusive. Said evidence shows that claimant's profits for the entire period from 1920 to 1940 averaged \$20,184.00 per annum. Profits appear to have declined severely after 1931 and did not thereafter recover. The average profits per annum for the 10 years preceding the nullification, that is from 1931 to 1940, were \$7,807.67. The profits for the three years immediately preceding the nullification were very small indeed, the average for 1938, 1939 and 1940 being \$3,840.13 per annum. It appears to be the contention of the claimant that this decline in profits was due not only to the general decline in business but to certain social legislation and other governmental restrictions imposed on its operations in Mexico. Without determining the correctness of this contention, it seems clear that said factors form part of the normal risk of doing business in a foreign country.

The Commission has also examined the evidence submitted by claimant's experts concerning the amount of hardwood timber

located on the land, the title to which was nullified. The testimony of the claimant's experts who are the same as those employed by The Laguna Company in support of its claim indicates that the amount of hardwood on the claimant's property was approximately one-third of the amount on the property of The Laguna Company. As we pointed out in the claim of Long Brothers (AMC No. 3—Decision No. 23—Series E) the value of timber lands involves a consideration of a large number of factors apart from the amount of available standing timber. After considering all of said factors in this claim, the Commission is of the opinion that the fair value of the claimant's lands, the title to which was nullified, would be \$.75 per hectare, or a total of \$175,047.00.

Claimant has also asked for severance damages to the aforesaid 32,718.9 hectares of land constituting the several small tracts adjacent to the large Vila tract. The evidence submitted establishes that these tracts as cut off from the larger tract have been rendered practically valueless. The cost involved in making an accurate survey alone would exceed the value of these tracts if they were to be operated separately. Accordingly, the Commission makes an award for severance damages to these tracts in the amount of \$.50 per hectare, or \$16,359.45.

As to the claim for interest on the award, it appears that claimant remained in possession of the land until the decision of the Supreme Court on February 18, 1946, and that up to that time it conducted certain operations for the extraction of chicle and lumber. An allowance of interest is therefore deemed not proper.

The total of the amount of damages above stated is \$191,406.45. The claimant is entitled to 10,960/11,000ths of that sum, or to \$190,710.43.

Accordingly, the claimant is awarded the sum of \$190,710.43, without interest.

DECISION No. 10-E

AMC Docket No. 19. Claimant: Estate of William White. Amount claimed: \$6,666.66. Amount awarded: \$6,666.67.

This is an agrarian claim under section 3(a) (3) of the Settlement of Mexican Claims Act of 1942 in the amount of 33,000 pesos and is based upon the expropriation of 132 hectares of land situated near the town of Guerrero, State of Chihuahua, Mexico, under a decree of the Governor of that State dated November 30, 1939. Provisional possession of the expropriated area was given on March 18, 1940. The action of the Governor was confirmed by a Presidential decree dated August 13, 1941.

The affected area is referred to in the decree as irrigated land and is part of a tract of land containing 425 hectares which was acquired by the late William White by purchase on or about July 30, 1909, for a consideration of 15,000 pesos.

The late William White, an American citizen, died on December 14, 1941. He was survived by a brother, Thomas F. White, and a sister, Elizabeth White Murray, both of whom are American citizens.

Claim is made for the aforesaid 132 hectares at the rate of 250 pesos per hectare. Statements are furnished by two residents of the town of Guerrero, near which the property is located, apprais-

ing the irrigated land at 300 pesos per hectare. Several photographs of the property are also presented.

The Commission is of the opinion that the record establishes in a satisfactory manner the reasonableness of the amount claimed, namely, 33,000 pesos, which when reduced to United States currency at the rate of exchange (4.95) applicable on the date of expropriation, amounts to \$6,666.67.

An award is accordingly made in favor of the claimant in the sum of \$6,666.67 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from November 30, 1939.

DECISION No. 9-E

AMC Docket No. 20. Claimants: W. Jefferson Davis and Isaac Pacht. Amount claimed: \$6,700,000.00. Amount awarded: \$166,005.97.

This claim is for the value of lands in Lower California, Mexico (18,637.76 acres) which claimants contend were lost to them by virtue of the action of the Mexican authorities and for which claimants contend the Mexican Government is responsible. The lands owned by claimants are described as follows:

	Acres
Hotel Playa de Ensenada Tract.....	181.79
Entrada Tract	265.77
Santa Maria Ranch.....	770.99
Santo Domingo Ranch.....	2,500.00
San Ramon Ranch	12,350.00
Guadalupe Ranch	2,499.64
Ensenada Town Lot	.41
Ensenada North District	69.16
	18,637.76

The property in question was originally devised to one Adam Thompson, an American citizen, by the will of one Richard Stephens, a citizen of Mexico. On September 22, 1917, said Adam Thompson organized a Mexican partnership known as "Adam Thompson y Compania" and conveyed to it all his interests under the will of the said Richard Stephens. On August 17, 1929, the name of the partnership was changed to "Thompson y Compania San Ramon." Said partnership was in turn owned by a Mexican corporation known as "Rancho San Ramon Sociedad Civil Limitada."

The present claimants are W. Jefferson Davis, Isaac Pacht and John J. Dwyer. They are shown to be the holders of all the outstanding stock in the said corporation in the following proportions: W. Jefferson Davis, 61 shares; Isaac Pacht, 10 shares; and John J. Dwyer, 29 shares.

The American citizenship of said claimants is satisfactorily established.

The facts are substantially as follows: On July 22, 1917, said Richard Stephens, a naturalized Mexican citizen, died in his native country, England. By his will he devised to Adam Thompson, an American citizen, all his property, real and personal, wherever situated. The will was admitted to probate in the State of California on October 26, 1917, with ancillary administration in the court in Ensenada, Lower California, Mexico.

On November 3, 1917, the Court of First Instance in Ensenada

recognized Adam Thompson as the sole devisee of Richard Stephens and as executor of the latter's estate. However, the Mexican District Attorney in Ensenada, Lower California, applied to the same Court on August 27, 1918, on behalf of the Government, for a reconsideration of its action in recognizing Thompson as the sole devisee of Stephens to the property. It was contended that under sub-section 1 of Section 7 of the Constitution of Mexico, a foreigner could not acquire this property, the same being in the prohibited zone, namely, within 50 kilometers of the beach of the Pacific Ocean in the Western District of Lower California.

The Court, on January 18, 1919, decided that the will of Stephens in so far as it purported to make Thompson the sole devisee of the real property located within the prohibited zone was invalid and directed institution of proceedings to determine the proper heirs at law of Stephens to the said property. The said decision was affirmed by the Appellate Court on May 28, 1919. An appeal was then taken to the Supreme Court of Mexico and on May 11, 1926, that Court reversed the action of the lower courts and dismissed the original action brought by the District Attorney. The Court held that although the lands were within the prohibited zone,

"aliens are not prevented from being *instituted as heirs* but are merely prevented from *acquiring* certain lands and waters in fee. . . ." (Italics supplied)

The Court, however, added that:

"At the proper time, this prohibitory enactment (restriction as to ownership of the property by Mexicans) may be obeyed . . . by disposing of the property to persons capable of acquiring them. . . ."

A permit to take title was subsequently granted to the said partnership, "Thompson y Compañía, San Ramon," by the Mexican Department of Foreign Relations on June 18, 1930. Claimants contend that the issuance of said permit was unreasonably withheld from May 11, 1926, the date of the Supreme Court's decision, up to June 18, 1930. Said permit was conditioned upon the disposition of the property within 5 years from said date, to a person capable of acquiring title under Mexican law. Claimants maintain that by reason of the action of the Mexican authorities, to which reference will hereinafter be made, they were unable to dispose of the property within the aforesaid period. They applied for and were granted an additional 2 years time within which to do so. Application for a further extension of time within which to comply with the requirement for the disposition of this property was made on April 28, 1938. This request was refused.

On September 17, 1938, an action was instituted by the Mexican Government in the Court at Ensenada for an order condemning the property for sale. Claimant Davis filed an application with the Court on February 11, 1939, for a stay of proceedings in that action pending disposition of a claim which had in the meantime been filed with the Agrarian Claims Commission established under the Agrarian Claims Agreement of 1938. This request was denied and on September 30, 1940, the Court rendered a judgment condemning the property for sale and directing the claimants to

sell the property at auction and to execute a deed in favor of the person who might be awarded the property. The decree further provided that the Court would issue such deed upon claimants' failure to do so.

It is pertinent to note that the said Agrarian Claims Commission refused to take jurisdiction of this claim for the reason that the property involved therein was not affected by any provisional or definitive decree of expropriation. The claim is now before us as a new claim under Section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. No issue is raised by claimants as to the right of the Mexican authorities to impose the aforesaid condition requiring the transfer of the property to a person legally capable of taking the same. They contend, however, that the Mexican authorities were remiss in failing to give effect to the aforesaid decision of the Supreme Court made on May 11, 1926—first, by withholding the issuance of a permit for the taking of title to the property until June 18, 1930, and secondly, by making it impossible for claimants to dispose of the property within the 5 year period therein provided and the extension thereof. In support of this contention they have submitted proof, hereinafter referred to, that the President of Mexico officially opened vast portions of their property to colonization; that the Mexican authorities prevented claimants from obtaining possession of the property following the aforesaid decision of the Supreme Court in their favor; that they permitted colonization of the lands by Mexican colonists and others, and, that all efforts on the part of the claimants and their predecessors in interest to compel their removal from the property proved unavailing.

The proof above referred to is as follows:

A decree of former President Obregon of Mexico addressed to the Department of Agriculture and Development, under date of July 5, 1923, authorized the colonization of a great amount of claimants' lands as follows:

"To the Department of Agriculture and Development:

"In accordance with article 18 of the Law of Colonization dated December 15th, 1883, your Department is hereby authorized to enter into a contract with Mr. Manuel Ayala for the subdividing, colonizing and improving up to 22,000 hectares of Government owned lands located between parallels 30 and 31, Latitude North in the Territory of Lower California; on the terms and conditions submitted.

"Given and signed at the National Palace in Mexico City on the fifth day of July, 1923. The Constitutional President of the United States of Mexico, A. OBREGON."

The affidavit of Manuel Ayala referred to in said decree states that the Santa Maria, Santo Domingo and San Ramon ranches were included in the terms of said decree.

As evidence that the Mexican Government acted with reference to property of claimants as its own, there is submitted the affidavit of one Gustavo Dato, a brother-in-law of former Governor Cantu of the Northern District of Lower California, wherein it is stated that:

"In 1926, the J. G. White Company, of New York, was em-

ployed by the President of Mexico, Plutarcho Elias Calles, to make a survey of different irrigation projects in Mexico, including among others the construction of a dam on the Santo Domingo River, at a location on the Santo Domingo Ranch, with the purpose of irrigating the San Ramon, Santa Maria, and San Simon tracts, and others."

As official recognition of the fact that they were denied possession of the lands, proof is produced establishing that for a number of years, claimants were excused from paying taxes on some of the property involved in this claim. A letter dated April 27, 1927, addressed by the then Governor of Lower California to one of the claimants, contains the following:

"With reference to your letter of the 2nd inst., I wish to inform you that in view of the fact that the ranch properties, the subject of your request, were under the control of the Government of this District since July 1922, there having been established thereon an Agricultural Colony by the name of 'Colonia Guerrero,' . . . it is agreed that the taxes appearing as delinquent be not imposed for the rural properties recorded in the municipality of Ensenada in the name of Richard Stephens, from the above mentioned month up until the second semester of the current year. . . ."

The affidavit of Antonio Castellanos, a Mexican attorney, is offered as corroboration of the fact that the lands were inhabited by colonists as claimed, with the full knowledge and consent of the Mexican Government. He states that:

"As evidence of the occupancy of the company's lands by the Federal Government of Mexico I saw the school house which the Government had erected, where educational facilities were offered to the settlers who had been placed on the company's lands by the Federal Government of Mexico.

"I further state that the San Ramon and other ranch properties owned by the company had at all times, since the rendition of judgment in the Supreme Court of Mexico in favor of the company, remained in the possession of the Federal Government of Mexico, and the colonists placed on the land by the Government.

"I was personally familiar with conditions existing on the Guadalupe Ranch, being the owner of a small ranch in that vicinity.

"The same conditions obtained on all the properties of 'Thompson y Cia., Rancho San Ramon,' as the possession of them by the Mexican Government effectively precluded any efforts by the owners to sell, lease or take possession of their properties, after titles had been perfected in the Mexican courts, and the company was decreed to be entitled to possession.

"I advised the officials of the Company that in my opinion the Mexican courts would take no action against the Mexican Government for the reason that the acts of the Mexican Federal Government were not open to question by the local courts.

"In my opinion, the courts were powerless to order dis-

possession of the properties after their occupation by the Federal Government through colonization, and it was my advice that application should be made to the Federal Government, through its various departments, and to the Governor of the Territory, and the executive departments of the Government, for relinquishment of possession. It is my understanding that this course was followed by the Company."

In an affidavit of one Charles A. G. Forbes it is stated at page 9:

"There is no question but that there was a concerted plan on the part of the Mexican Government, evidenced first in 1918, to prevent these properties from going into the legal possession of 'Thompson y Cia., Rancho San Ramon,' and to utilize at least three of the ranches, namely, the San Ramon, the Santo Domingo, and the Santa Maria ranches, together with the adjoining San Simon tract, in what thereafter came to be known as the Mexican Government's 'Six Year Plan' for development (Exhibit 13-I). The result of Mr. Baz' examination of the governmental files and records at Mexico City, particularly the records of the Department of Agriculture and Colonization, confirm what I have personally known for years, from and after 1918, to be the plan of the Mexican Government to utilize these ranches for its Irrigation Program."

A statement of Leopaldo Uribe Valdes, a Mexican attorney, contains the following reference to the occupation and possession of the lands by the Mexican Government:

"... The Company was legally adjudicated by the Supreme Court of Mexico, after years of litigation (1918-1926) and delay, to be the owner in fee of the properties of the Estate, according to copy of decision of said court, which I have examined, but could not transfer said properties, as directed by the Department of Foreign Affairs, within a specified time, as possession and occupancy was at all times in the Mexican Government, through its [*sic*] Federal Agencies, such as the Department of Agriculture and Colonization, which under orders of Governor Cantu, Governor of the Territory of Lower California, had established Colonies of Colonists on the Santa Maria and San Ramon ranches, and were at all times, and still continue, in possession and occupancy of the properties of the Estate and its successor company, a Mexican Corporation, organized in accordance with Mexican law for the specific purpose of holding the legal titles in conformance to Mexican law and procedure. Through actual and continuous occupancy of the properties by the federal governmental agencies, the company was never able to enter into possession, nor actually given possession, as entitled to under judicial decree, without which possession transfer could never have been made."

Affidavits of claimants W. Jefferson Davis, Isaac Pacht, John J. Dwyer and others afford further corroboration of the fact that possession of the lands in question was withheld by the Mexican Government from claimants and that the Mexican authorities per-

mitted colonists to occupy and cultivate much of the same.

Claimants made protests to the Governor of Lower California and to other officials regarding the said illegal occupation of their lands but these protests were unheeded.

On August 17, 1931, a petition was filed by claimants with the Governor of Lower California requesting the removal of the Mexican families which had been placed upon the San Ramon Ranch by former Governor Cantu. It does not appear that any action was taken thereon. On June 23, 1932, claimants wrote to the Agent of the Department of Agriculture at Tia Juana requesting the ejection of the colonists located upon their property, making particular reference to the San Ramon Ranch and supplying a list of the names of those in possession. Claimants further offered to enter in a lease with the Mexicans. The receipt of this letter was acknowledged by the Governor of Lower California on July 11, 1932, advising that the matter was being referred to the Secretary of Agriculture, but apparently no further action was taken thereon although several conferences took place. On February 3, 1933, claimant Davis wrote to the President of Mexico complaining about the illegal occupancy of their land and requesting that

"... steps be taken by the proper authorities to oust these squatters from our properties and that we be put into actual possession of the properties to which we have clear legal titles, and which we are unable to operate because of the presence on these properties of squatters, illegally in possession, but acting under some color of authority from the Agency 'Agricultura y Fomento at Tia Juana.'"

Receipt of said letter was acknowledged by President Rodriguez, by letter of February 25, 1933, wherein he advised that the matter was being referred to the Secretary of Agriculture and Development. Here again claimants met with no success. On the contrary, said Department of Agriculture instituted a proceeding against claimants in November 1933 with the idea of limiting their title to the San Ramon Ranch by excluding from the boundaries of their properties, the lands colonized by former Governor Cantu as aforesaid. Claimants were directed to prove their titles and after a long delay, the Secretary of Agriculture decided on March 7, 1935 that the San Ramon Ranch was privately owned and not subject to governmental colonization. This decision, however, was not given any more effect than the other efforts at dis-possession of the colonists.

Although the aforesaid efforts to obtain redress from the Mexican authorities relate largely to the occupancy of the San Ramon Ranch which had an area of 12,350 acres and was the largest tract owned by claimants, the other testimony above referred to clearly shows that claimants were likewise deprived of possession of the remaining properties owned by them and for which claim is made. There is also evidence that there were prospective purchasers or lessees of the property but that no progress could be made in the negotiations for a sale or lease thereof because of the said illegal occupation of the lands and because of the refusal of the authorities of the Mexican Government to issue the necessary permit for the transfer of said property.

We hold that the proof, as above outlined, establishes that the Mexican authorities had so dealt with claimants' lands as to make it impossible for claimants to comply with the condition for the disposition of the property and that in the circumstances the judgment of the Court of September 30, 1940, condemning claimants' property for sale constituted a denial of justice to claimants.

It is a well settled principle of international law that a denial of justice may be predicated on the failure of the authorities of a government to give effect to the decisions of its courts. In the claim of *H. G. Venable* (United States v. Mexico, Opinions of Commissioners, 1927, pp. 368-369) the American Commissioner stated that

"There is another aspect of the case which to my mind clearly reveals the responsibility of the Government of Mexico. It appears to be a well-established principle of international law that a denial of justice may be predicated on the failure of the authorities of a government to give effect to the decisions of its courts. See the *Putnam* case, Docket No. 354;¹ the *Youmans* case, Docket No. 271;² and the *Mallen* case, Docket No. 2935,³ decided by this Commission; also the *Montano* case, Moore, *International Arbitrations*, vol. 2, p. 1630; the *Fabiani* case, *Ibid.*, vol. 5, p. 4878; and the case of *W. B. Grace & Co. against Peru*, *Foreign Relations of the United States*, 1904, p. 678. The *Lord Nelson* case, decided under the Special Agreement of August 18, 1910, between the United States and Great Britain, interestingly illustrates the point. American Agent's Report, p. 432. Claim was made in this case by the British schooner *Lord Nelson* shortly before the declaration of war between the United States and Great Britain in 1812. An American court pronounced the seizure of the vessel to be illegal, directed the vessel to be sold and the proceeds of the sale to be paid to the owner. The court's direction with regard to the payment to the owners was not complied with, because the funds were embezzled by the clerk of the court. In the proceedings before the Arbitral Tribunal the American Agent admitted liability in the claim for \$5,000.00, the principal amount claimed, and left to the consideration of the Tribunal the question whether interest should be included in the award. The Tribunal rendered an award in the case which included the principal sum of \$5,000.00 and interest amounting to \$18,644.38."

To the same effect the presiding Commissioner in said claim stated at page 345

"... Even if here was not willful neglect of duty, there doubtless was an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency. Whether this insufficiency proceeded from the law or from deficient execution of the law is immaterial. The Court at Monterrey can not plead innocence; having constrained private individuals to leave their property in the hands of others,

having allowed unknown men to spoil and destroy this property, and not having taken any action whatsoever to punish the culprits, to obtain indemnification, to have the custodians removed and replaced, or to bring the bankruptcy to an end, it rendered Mexico indirectly liable for what occurred. Nor can the Court exculpate itself by alleging that no American citizen has applied to it in order to have these wanton acts investigated and to have the necessary action both against the perpetrators of crimes and the unreliable custodians started; to do such things is an essential part of proper governmental action and can not be made dependent upon private initiative."

In Borchard's work "The Diplomatic Protection of Citizens abroad" he states at page 339 that:

"A denial of justice after trial may be said to occur when the proper authorities of a foreign country refuse to execute the laws as interpreted by the courts of the country or to give effect to the decisions of the courts; . . . when they unlawfully prevent an appeal by the claimant."

In the claim of the *Interoceanic Railway of Mexico, Ltd., et al.* (British-Mexican Claims Commission, Further Decisions and Opinions of the Commissioners,——, pp. 118, 126-127) it is held that:

"If an alien, having won a lawsuit and being desirous of seeing the judgment executed, addresses himself to those nonjudicial authorities upon whom, in most countries, execution of the judgments of civil courts is incumbent, and they either refuse to assist him, or postpone their action indefinitely, the alien in question is certainly entitled to complain of denial or undue delay of justice, although the responsibility cannot be laid at the door of the tribunal that sustained his action.

"If a foreigner, in the pursuit of his private interests, needs a document, which can only be delivered by one of the administrative authorities in the country where he transacts his affairs, and if this document is improperly withheld or delivered too late to be of any use, this will again constitute the same breach of international law, without any judicial authority being blameable."

See also claim of *Henry W. Peabody and Company v. Mexico* (Opinion of Commissioners, 1929, page 222).

A question is presented as to whether claimants had sufficiently exhausted their remedies to obtain redress, it not being shown that they had applied to the Courts at any time to procure the eviction of those illegally occupying their lands. Upon the facts in the record, however, it appears that there was ample warrant for claimants to follow the advice of their Mexican attorney (see quotation from affidavit of Antonio Castellanos, above cited), as to the futility of resorting to the courts, if for no reason other than the length of time involved in litigation. The litigation concerning the validity of the will of Richard Stephens covered a period of about 8 years, from 1918 to 1926. Actually, almost 12

years had elapsed before the Department of Foreign Relations issued its permit to claimants' predecessors. Considering that the claimants had a limited time in which to dispose of their property and having in mind their previous experience in the courts, we are not prepared to say that they were not justified in concluding that they would be divested of their title for failing to meet the conditions attached to their ownership, before any litigation instituted by them could reach a finality. In any event, they were confronted with the practical question as to whether the Mexican officials would give any effect to a decree granting them possession in view of their apparent indifference concerning the 1926 decree of the Supreme Court, endowing them with legal ownership. Upon the whole, we feel that claimants took all the action in the premises which prudent persons might reasonably be expected to take.

The record before us does not show what proceedings, if any, were taken in pursuance of the aforesaid decree of September 30, 1940, ordering the sale of claimants' property. Nor is it shown that there has been an actual change of ownership upon the records. However, claimants were deprived of their lands by reason of the action of the Mexican authorities, quite as effectively as if there had been a formal expropriation of them. Since the decree of September 30, 1940 was in effect an official determination that the claimants had forfeited their right to own the property because the condition attached to the ownership of same had not been met, said decree in effect divested claimants of their title. Whether the Mexican authorities went through the motions of any formal sale pursuant to said decree seems to us to be of no moment.

The property had at all times been under their control and they might have deemed it unnecessary or undesirable to make any formal transfer. Were we to hold that a showing of a formal sale of the property was a sine qua non to recovery, claimants might forever be barred from successfully prosecuting a claim, notwithstanding the obvious wrong which was done to them. We do not so hold. We find that they lost their lands as claimed and that they are entitled to compensation therefor.

Passing to the item of damages, we find rather inconsistent claims as to the value of the lands in question and other losses alleged to have been sustained. In the claim filed with the Agrarian Claims Commission on March 7, 1939, the losses were set forth as being \$1,309,277.09. The lands (20,000 acres) were claimed to be worth \$600,000. In a subsequent memorandum filed with the United States Department of State, claim is made for \$2,012,277.09. In a brief filed with this Commission claim is made for \$6,700,000. The property is appraised by the aforesaid Charles A. G. Forbes as having a value of \$3,203,862.35. Gustavo Dato appraises the same at \$6,026,112.35. Charles A. Herman estimates the value to be \$2,705,000.

Although the said appraisers appear to be qualified, it is evident that their estimates are based upon the potential rather than the present value of the property. Their estimates are far at variance with our findings as to value of lands substantially similar to those involved in this claim.

It should be noted that although the claim before us is for 18,637.76 acres, as above noted, the Hotel Playa de Ensenada Tract (181.79 acres) has been improperly included in this claim. Said tract was sold in 1927 by claimants' predecessor. Claimant alleges that part of the purchase price remains unpaid and makes claim therefor. We find no basis for an award for said claim. We find that the remaining lands (18,455.97 acres) may be appropriately classified and evaluated as follows:

9,550.00 acres irrigable at \$12 per acre.....	\$114,600.00
7,500.00 acres subirrigated at \$4 per acre.....	30,000.00
1,405.97 acres unclassified at \$1 per acre.....	1,405.97
18,455.97 acres	146,005.97

As to the claim for awardable legal and other expenses, proof as to the vast sum asserted is unsatisfactory, although there is no doubt that great expenditures were made. Upon the showing made, we find that an award to claimants of the sum of \$20,000 upon this aspect of the claim is reasonable.

Accordingly, claimants are awarded \$166,005.97 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from September 30, 1940, as follows:

W. Jefferson Davis.....	\$101,263.64
Isaac Pacht	16,600.60
John J. Dwyer	48,141.73
Total	166,005.97

DECISION No. 74-E

AMC Docket No. 21. Claimant: Dunn, Kinder y Compania. Amount claimed: \$78,084.85. Amount awarded: \$2,763.63.

This claim is before the Commission pursuant to the provisions of section 3(a) (2) and (3) of the Settlement of Mexican Claims Act of 1942. It was originally filed with the Agrarian Claims Commission created under the Agreement of 1938 between the United States and Mexico, but was not appraised because there was no proof to establish the American citizenship of claimant and no evidence of any wrongful interference with claimant's property by authorities of the Mexican Government. The claim was refiled with this Commission on November 23, 1943.

The property involved herein was purchased by the Mexican partnership of Dunn, Kinder y Compania on September 17, 1924. This firm was originally composed of David C. Dunn, Thurman A. Kinder and Richard Sethman. The first named partner subsequently acquired the interests of the other two partners and an allotment to him of the entire loss has been submitted. The American citizenship of David C. Dunn and Thurman A. Kinder has been established. Richard Sethman had sold his interest in the partnership to David C. Dunn before any part of this claim arose.

Claim is predicated upon the expropriation of portions of certain properties known as *Potrero de las Gachupines*, *Capote* and *Barranca* located in the Municipality of Matamoros, State of Tamaulipas under Presidential Decrees dated and published as follows:

<i>Date of signing</i>	<i>Published</i>	<i>Area (hectares)</i>
Oct. 22, 1935.....	Dec. 26, 1935.....	193
Nov. 12, 1935.....	Jan. 21, 1936.....	460.8
Dec. 10, 1935.....	Feb. 11, 1936.....	633
Sept. 9, 1936.....	Oct. 17, 1936.....	20
June 9, 1937.....	July 19, 1937.....	116
Dec. 2, 1942.....	Apr. 3, 1943.....	114
		1,536.8

The last of the above decrees was merely a confirmation of the Governor's provisional decree issued January 24, 1939, under which provisional possession was given on January 25, 1939. This Commission has jurisdiction of this item of claim pursuant to the provisions of section 3 (a) (3) of the Act. This is in line with our holding that a provisional decree, accompanied by possession at a time within our jurisdiction, gives rise to a claim.

The expropriations effected by the other decrees listed above were for the exclusive jurisdiction of the Agrarian Claims Commission with which they were originally filed. They may not be considered by this Commission anew, under any category of agrarian claims described in the Act. Even if construed to be petitions for review of the Agrarian Claims Commission appraisal, no award can be made to claimant. Any review made by this Commission must be based upon the record before the former Commission. An examination of the record established before the Agrarian Claims Commission shows that it is entirely inadequate to warrant an award.

Claimant also alleges that other land belonging to the Mexican partnership, amounting to 1,684.2 hectares, was wrongfully invaded and occupied by agrarians under authority of responsible Mexican officials. No evidence whatever has been submitted to sustain such allegation. This portion of the claim is therefore disallowed.

As to the 114 hectares involved in the claim above referred to, very meager evidence has been submitted concerning the value thereof. It appears that the fiscal value was 120 pesos per hectare. In the absence of better evidence the Commission finds this to be the fair estimate of value. 114 hectares at 120 pesos per hectare totals 13,680 pesos. At the date of provisional possession, January 25, 1939, the prevailing rate of exchange was 4.95 x 1, the equivalent in United States currency being \$2,763.63.

An award is accordingly made to David C. Dunn for the sum of \$2,763.63, together with interest from January 25, 1939, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 64-E

AMC Docket No. 22. Claimant: Stewart Hunt. Amount claimed: \$17,470.00. Amount awarded: \$900.00.

This claim consists of two separate items.

The first is a claim for \$15,470.00 based upon the loss of live-stock in Mexico during the month of August 1912. It was never filed with any previous Commission. Our jurisdiction over claims

not previously filed does not extend to one which arose before January 1, 1927. This item must therefore be disallowed.

The remainder of the claim in the amount of \$2,000.00 is before the Commission pursuant to the provisions of section 3(a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon loss of livestock and other personal property in the course of the so-called "Escobar" revolution during the spring of 1929. The history of this revolution and a statement of the principles of law applicable thereto are set forth in the decision of this Commission in the claim of *Jesse J. Simpson, et al.* (Series E—Decision 63). This Commission has held that Mexico is not liable for the acts of rebel forces during the course of the "Escobar" revolution but that it is responsible under international law for the acts of the federal forces.

It is necessary, therefore, only to apply these established principles to the facts involved in said second item of claim. The nationality of the claimant and his ownership of cattle is established. The evidence in the record shows that both rebel and federal forces crossed the claimant's ranch during the course of the "Escobar" revolution. The claimant alleges that these forces killed or drove off 60 steers valued at \$30.00 each, a total of \$1,800.00, and, in addition, committed damage to the household and premises in the amount of \$200.00.

The evidence as to the amount of damage inflicted by the federal and rebel forces, respectively, is conflicting and lacks definiteness. The difficulty of precise proof as to the allocation of the loss attributable, respectively, to acts of unsuccessful revolutionists and to those of federal troops is, however, recognized by the Commission. As above stated, the Government of Mexico is liable only for the damage committed by the federal forces. Upon a consideration of the record the Commission is of the opinion that a fair estimate of the losses caused by the federal forces is \$900.00, and that claimant is entitled to indemnity therefor.

Accordingly, an award is made to Stewart Hunt in the amount of \$900.00 with interest from June 1, 1929.

DECISION No. 88-E

AMC Docket No. 24. Claimant: George J. Childs. Amount claimed: \$5,500.00. Amount awarded: \$1,238.88.

This claim in the amount of \$5,500 is predicated upon the expropriation of 404.7 hectares of claimant's land in the District of Fuerte, State of Sinaloa, Mexico, under a Presidential Decree dated September 21, 1938, and published March 23, 1939.

The evidence filed herein, together with the evidence in another claim filed with the Agrarian Claims Commission (Docket No. 232) satisfactorily establishes claimant's ownership of the land, and his American nationality at all times pertinent to the claim.

Claimant contends that he did not know of said Presidential Decree until some time later. Constructive notice thereof is imputed to him, however, by virtue of the publication of such decree in the *Diario Oficial* on March 23, 1939. For the reasons set forth in the Lamm claim (Decision No. 79—Series E) this Commission holds that this claim arose, within the meaning of the Settlement

of Mexican Claims Act of 1942, on the date of publication, that is, March 23, 1939. The claim, therefore, comes within the provisions of Section 3(a) (3) of the Settlement of Mexican Claims Act of 1942 and is within the jurisdiction of this Commission. The fact that the claim might have been filed with the Agrarian Claims Commission does not, under the provisions of the Act, prevent its consideration by this Commission.

After careful consideration of the evidence as to value, as well as evidence in other claims involving similar land, the Commission finds that 15 pesos per hectare constitutes fair and reasonable compensation for the land in question. Computed at this rate the area expropriated has a value of 6,070.50 pesos. This sum converted into dollars at the rate of exchange existing on the date of the decree (4.90 x 1) amounts to \$1,238.88. The award should carry interest from the date the claim arose.

The claimant herein, George J. Childs, is, therefore, awarded the principal sum of \$1,238.88, which amount should carry interest from March 23, 1939, as provided in Section 7 of the Act.

DECISION No. 56-E

AMC Docket No. 25. Claimant: William Wallace Murray. Amount claimed: \$190,761.99. Award: disallowed.

This is an agrarian claim based upon the expropriation of 27,054 hectares of land comprising a portion of Lot No. 1 of a ranch known as the Babicora ranch, situated about 150 miles west of the City of Chihuahua, State of Chihuahua, Mexico, under 7 Presidential Decrees, issued during the years 1926, 1937 and 1942.

It is alleged that Lot No. 1 contained a total area of 40,579 hectares acquired by the claimant, an American citizen, in two separate tracts, one of 37,072 hectares on or about March 27, 1931, and the balance of 3,507 hectares on or about August 20, 1923. Following the acquisition of this land by claimant, it was leased by him to the Babicora Development Company, an organization conducting extensive ranching operations in the State of Chihuahua.

The losses alleged are based upon the following decrees, affecting the areas indicated:

<i>Presidential decree</i>	<i>Area (hectares) expropriated</i>
November 18, 1926	3,200
August 4, 1937	3,107
January 7, 1942	10,912
January 7, 1942	1,478
January 7, 1942	1,800
January 7, 1942	3,739
January 7, 1942	2,818
	27,054

Under the Settlement of Mexican Claims Act of 1942, the only agrarian claims over which this Commission has jurisdiction are those described in paragraphs (1), (2) and (3) of section 3(a) of said Act, to wit:

"(1) Agrarian claims which arose between January 1, 1927 and August 30, 1927, inclusive, and which were not filed with the General Claims Commission established pursuant to

the Convention between the United States and Mexico signed September 8, 1923 (43 Stat. 1730) ;

"(2) Agrarian claims which are predicated upon provisional expropriation decrees signed between August 31, 1927, and December 1, 1938, inclusive, but not published prior to December 1, 1938, and which were not filed with the Agrarian Claims Commission established pursuant to the Agreement between the United States and Mexico effected by exchange of notes signed on November 9 and November 12, 1938, respectively (hereinafter referred to as the Agrarian Claims Agreement of 1938) ;

"(3) Agrarian claims which arose between December 1, 1938, and October 6, 1940, inclusive, and which were not filed with the Agrarian Claims Commission on or before July 31, 1939";

It is obvious from a mere reading of the foregoing paragraphs that, standing alone, no Presidential Decree issued on any of the aforesaid three dates, to wit: November 18, 1926, August 4, 1937, or January 7, 1942, would give rise to an agrarian claim which this Commission would be authorized to consider.

We have, nevertheless, examined the record to determine whether jurisdiction might not properly be predicated upon the basis of provisional decrees antedating the foregoing Presidential Decrees. Under paragraph 2 above quoted we are empowered to adjudicate agrarian claims not previously filed which are predicated upon provisional decrees signed between August 31, 1927, and December 31, 1938, inclusive, but not published prior to December 1, 1938. The Commission has heretofore held that in order to justify an award under paragraph 2 the record must contain a showing that a provisional decree was accompanied by possession thereunder at a time within the jurisdiction of the Commission. Likewise, with respect to paragraph 3 above quoted, we have assumed jurisdiction over agrarian claims not previously filed which were based upon provisional decrees signed between December 1, 1938, and October 6, 1940, inclusive, provided that provisional possession was granted prior to October 6, 1940.

From a careful consideration of all the facts involved in this claim, we conclude that all the items involved therein are outside of our jurisdiction, for the reasons which will hereinafter be shown.

The claim under the Presidential Decree of *November 18, 1926*, is barred for our consideration, this Commission being without authority to consider any agrarian claims arising prior to January 1, 1927.

As to the claim under the Presidential Decree of *August 4, 1937*, we find that this decree was preceded by a Governor's Decree dated *November 13, 1935*. Provisional possession was granted thereunder on December 16, 1935. To bring this item of claim within our jurisdiction under the aforesaid section 3(a)(2) of the Act, it was incumbent upon claimant to establish that said Governor's Decree was not "published prior to December 1, 1938." This he has failed to do although afforded ample opportunity to do

so. In the absence of such proof, the claim may not be considered by this Commission.

This brings us to consideration of the remaining five items, affected by the five Presidential Decrees issued on January 7, 1942.

The first of these was the decree expropriating 10,912 hectares. This decree was preceded by a provisional decree of October 29, 1937, expropriating 9,667 hectares. Provisional possession was given on December 12, 1937, under the said provisional decree. Here, too, although given an opportunity to do so, claimant has not established the date of publication of the said provisional decree. In the absence of a showing that such publication was made subsequent to December 1, 1938, this Commission is barred from passing upon this claim.

The Presidential Decree of *January 7, 1942*, expropriating 1,478 hectares from *Lot No. 1* modified a provisional decree of *May 29, 1939*, which had expropriated a larger area from *Lot No. 2*. Accordingly, no land in *Lot No. 1* was affected by any decree, earlier than that of the Presidential Decree of January 7, 1942. The said decree contains a statement that provisional possession had not been given. This item of claim is therefore one which arose on January 7, 1942, and inasmuch as our jurisdiction does not go beyond October 6, 1940, we have no authority to pass upon the merit thereof.

The Presidential Decree of *January 7, 1942*, affecting 1,800 hectares, expressly states that no provisional decree had been issued with respect to this expropriation. The claim, therefore, arose on January 7, 1942, and is barred as coming beyond the limits of our jurisdiction.

The Presidential Decree of *January 7, 1942*, expropriating 3,739 hectares was preceded by a provisional decree of *October 28, 1936*, covering 2,739 hectares. The said provisional decree was published on February 20, 1937. This item is therefore barred from our consideration.

The last of these Presidential Decrees of *January 7, 1942*, expropriated 2,818 hectares. An earlier provisional decree of *May 1, 1939*, expropriated 2,916 hectares. Under paragraph 2, above quoted, our jurisdiction over claims based upon provisional decrees is limited to those issued prior to *December 1, 1938*. This claim may therefore not be considered under the provisions of that paragraph. Although a claim under a provisional decree dated May 1, 1939, might be considered under paragraph 3, above quoted, it would have been necessary for claimant to further establish that provisional possession had been given prior to *October 6, 1940*. Claimant has failed to establish these facts although called upon to do so. This item must therefore be considered as arising under date of the Presidential Decree of *January 7, 1942*, and as being outside of our jurisdiction.

For the reasons indicated with respect to each of the foregoing items, the Commission holds that the entire claim is not within its jurisdiction and it is powerless to pass upon the merits of the same.

DECISION No. 54-E

AMC Docket No. 26. Claimant: George Leslie Willson. Amount claimed: \$70,633.46. Award: disallowed.

This is an agrarian claim based upon the expropriation of 1,369 hectares of land comprising a portion of Lot No. 2 of the Babicora ranch situated about 150 miles west of the City of Chihuahua, State of Chihuahua, Mexico, under two Presidential Decrees dated February 23, 1928 and January 7, 1942, affecting 1,234 hectares and 135 hectares respectively.

Lot 2 of the Babicora ranch was acquired by the claimant, an American citizen, by purchase on or about March 27, 1931. While essentially grazing land, the property contained certain areas suitable for agricultural purposes and other portions containing considerable timber. During all of the period of claimant's ownership of the tract he has leased it to the Babicora Development Company for ranching purposes.

Since it is not shown that the claimant acquired an interest in Lot No. 2 prior to March 1931, it is not understood upon what basis a claim is asserted on his behalf with reference to the expropriation of 1,234 hectares by Presidential Decree of February 23, 1928. Aside from that circumstance, however, it is clear that the expropriation under that decree (modifying a provisional decree of September 28, 1926, under which provisional possession was given on November 7, 1926) could not give rise to a claim within the jurisdiction of this Commission as defined in paragraphs (1), (2) and (3) of Section 3(a) of the Settlement of Mexican Claims Act of 1942, relating to agrarian claims not previously filed.

Since the jurisdiction of this Commission does not extend to claims arising after October 6, 1940, it is equally clear that the Commission is without jurisdiction to consider a claim based upon the second expropriation involved herein which is based on a Presidential Decree of January 7, 1942. That decree states that a Governor's provisional decree of expropriation was issued in that case on May 9, 1939 but that no provisional possession was given. This Commission has uniformly applied the rule that the minimum requirements for the existence of an agrarian claim under the Settlement of Mexican Claims Act of 1942, consist of a provisional decree of expropriation followed by the granting of provisional possession at a date within the period of time covered by the Commission's jurisdiction. Consequently it follows that the record before the Commission in this claim does not establish facts which would constitute a basis for a valid claim within the Commission's jurisdiction.

Claim is also made in the amount of 123,720 pesos, said to represent the extent to which the unexpropriated portion of the tract was depreciated as a result of the above-mentioned expropriations as well as certain other expropriations with reference to which claims were presented to the Agrarian Claims Commission established under the Agreement of 1938 between the United States and Mexico and appraised by the American Commissioner designated pursuant to that Agreement. No allowance was made by the American Commissioner with respect to the claim of this claimant in Agrarian Docket No. 142 based upon depreciation in

the value of unexpropriated areas, and claimant filed no petition to review such action under the procedure provided in the Settlement of Mexican Claims Act of 1942. Instead a similar item is now presented for our determination. Inasmuch as the expropriations for which claim is made are found, as herein set out, not to be within the jurisdiction of this Commission, it is obvious that a claim for depreciation of remaining lands by reason of such expropriation is likewise not within our jurisdiction.

For the reasons set forth above, the Commission holds that the present claim is not within its jurisdiction. The Commission is therefore powerless to pass upon the merits of the claim. This decision is without prejudice to the right of the claimant to take any other steps which may be appropriate to seek indemnity for the losses alleged.

DECISION No. 55-E

AMC Docket No. 27. Claimant: Austin William Clark. Amount claimed: \$116,383.70. Award: disallowed.

This is an agrarian claim based upon the expropriation of 18,286 hectares of land comprising a portion of Lot No. 4 of the Babicora ranch situated about 150 miles west of the City of Chihuahua, State of Chihuahua, Mexico, under two Presidential Decrees dated January 7, 1942.

Lot No. 4 was acquired by the claimant, an American citizen, by purchase on or about March 27, 1931. Since that time the tract has been under lease to the Babicora Development Company for ranching purposes. While essentially grazing land, Lot No. 4 also contained certain areas suitable for agricultural purposes as well as considerable timberland.

The first Presidential Decree involved herein, under which 13,486 hectares of land were taken from the claimant, modified a decree of the Governor of the State of Chihuahua issued on April 30, 1938, and published on May 21, 1938, under which 14,480 hectares were expropriated from the claimant for the poblado "Pena Blanca." Since the Presidential Decree in this instance was issued on January 7, 1942, the expropriation involved in this portion of the claim does not fall within the provisions of the law, (Settlement of Mexican Claims Act of 1942) by which jurisdiction is conferred upon this Commission. Under that law this Commission is not clothed with jurisdiction over agrarian claims which arose later than October 6, 1940. This Commission has uniformly applied the rule that the minimum requirements for the existence of an agrarian claim under the Settlement of Mexican Claims Act of 1942, consist of a provisional decree of expropriation followed by the granting of provisional possession at a date within the period of time covered by the Commission's jurisdiction. Consequently it follows that the record before the Commission in this claim does not establish facts which would constitute a basis for a valid claim within the Commission's jurisdiction.

The second expropriation for the poblado "Boquilla de Chavez," being based upon a Presidential Decree of expropriation dated January 7, 1942, likewise does not come within the terms of any of the jurisdictional provisions of the Act to which reference has just been made. The Presidential Decree states that no decree of

the Governor was issued with respect to this expropriation, and it is not established that provisional possession of the property was ever given.

Claim is also made for the amount of depreciation in the value of the unexpropriated portion of Lot No. 4, alleged to have been caused by the aforementioned expropriations and certain other expropriations which were the subject of a claim (Agrarian Docket No. 145) filed with the Agrarian Claims Commission established under the Agreement of 1938 between the United States and Mexico. A similar claim for depreciation in the value of unexpropriated lands was included in the latter-mentioned claim but no allowance therefor was made, and claimant filed no petition for review of such action under the procedure provided in the Settlement of Mexican Claims Act of 1942. Instead a similar item of claim is now presented for our determination. Inasmuch as the expropriations for which claim is made are found, as herein set out, not to be within the jurisdiction of this Commission, it is obvious that a claim for depreciation of remaining lands by reason of such expropriations is likewise not within our jurisdiction.

For the reasons set forth above, the Commission holds that the present claim is not within its jurisdiction. The Commission is therefore powerless to pass upon the merits of the claim. This decision is without prejudice to the right of the claimant to take any other steps which may be appropriate to seek indemnity for the losses alleged.

DECISION No. 45-E

AMC Docket No. 28. Claimant: Babicora Development Company. Amount claimed: \$89,427.41. Award: disallowed.

This is an agrarian claim and is based upon the expropriation of 1,667 hectares of land comprising a portion of Lot No. 5 of the Babicora ranch situated about 150 miles west of the City of Chihuahua, State of Chihuahua, Mexico, under two Presidential Decrees dated January 7, 1942.

Lot No. 5, containing an original area of 39,526 hectares, was acquired by the claimant, a California corporation, by purchase on or about August 8, 1905.

Claim is made with reference to the two expropriations mentioned above, as follows: (1) Pena Blanca tract, consisting of 732 hectares of agricultural land and 262 hectares of grazing land, making a total of 994 hectares; (2) Chalchihuites tract, consisting of 219 hectares of agricultural land and 445 hectares of grazing land, making a total of 664 hectares.

Claim is also made on account of depreciation in the value of the unexpropriated portion of Lot No. 5 (23,321 hectares) alleged to have resulted from the two expropriations referred to above and certain additional expropriations which were the subject of a claim (Agrarian Docket No. 112) filed with the Agrarian Claims Commission established under the Agreement of 1938 between the United States and Mexico.

The Pena Blanca expropriation was effected under a Presidential Decree dated, as above indicated, January 7, 1942. Thereby a total of 994 hectares of land was taken from Lot No. 5. None of these 994 hectares of land had previously been the subject of

any provisional decree. It is true that said Presidential decree modified a decree of the Governor of the State of Chihuahua dated April 30, 1938, and published May 21, 1938, but it appears that all the land included in the said decree of the Governor of the State of Chihuahua was taken from Lot No. 4, a tract of land separate and distinct from Lot No. 5 and that no land from Lot No. 5 was affected by the said decree of the Governor. The jurisdiction of this Commission is limited to claims which arose prior to October 7, 1940. That limitation in the Settlement of Mexican Claims Act of 1942 is in consonance with the Convention of November 19, 1941, whereby the sum payable thereunder was in settlement of certain American claims arising prior to October 7, 1940. It is clear, therefore, that this portion of the claim, not having arisen prior to October 7, 1940, does not fall within the jurisdiction of this Commission.

The Chalchihuites expropriation was also effected by a Presidential Decree dated January 7, 1942. The 664 hectares involved therein were located within Lot No. 5. That decree modified a decree of the Governor of the State of Chihuahua dated May 1, 1939, under which only 510 hectares of land were taken from Lot No. 5. The Presidential Decree of January 7, 1942, recited that there was no certainty as to the date when provisional possession may have been given under the Governor's Decree of May 1, 1939. This Commission has uniformly applied the rule that the minimum requirements of an agrarian claim under the Settlement of Mexican Claims Act of 1942 are a Governor's Decree of expropriation, followed by the granting of provisional possession at a date within the period of time covered by the Commission's jurisdiction. Consequently, it follows that in the absence of proof that provisional possession was given prior to October 7, 1940, the record before the Commission with reference to this latter expropriation does not contain facts which would constitute a basis for a valid claim within this Commission's jurisdiction.

The American Commissioner designated pursuant to the Agreement of 1938 between the United States and Mexico made no allowance for the item of depreciation involved in Agrarian Docket No. 112, and claimant filed no petition to review such action under the procedure provided in the Settlement of Mexican Claims Act of 1942. Instead, a similar item of claim is now presented for our determination. Inasmuch as the expropriations for which claim is made are found, as hereinbefore set out, not to be within the jurisdiction of this Commission, it is obvious that a claim for depreciation of remaining lands by reason of such expropriations is likewise not within our jurisdiction.

For the foregoing reasons, the Commission must hold that the present claim is not within its jurisdiction and that it is powerless to pass upon the merits of the claim. This decision is without prejudice to the right of claimant to take any other steps deemed appropriate by it to procure indemnity for the losses alleged.

DECISION No. 52-E

AMC Docket No. 29. Claimant: Richard A. Clark. Amount claimed: \$69,275.05. Award: disallowed.

This is an agrarian claim based upon the expropriation of 2,608 hectares of land comprising a portion of Lot No. 6 of the Babicora ranch situated about 150 miles west of the City of Chihuahua, State of Chihuahua, Mexico, under a Presidential Decree dated January 7, 1942.

Lot No. 6 was acquired by the claimant, an American citizen, by purchase on or about March 27, 1931. Since that time the tract has been under lease to the Babicora Development Company for ranching purposes. While essentially grazing land, the tract contains certain areas suitable for agricultural purposes as well as some timber land.

The Presidential Decree of expropriation issued on January 7, 1942, under which 2,608 hectares of land were taken from the claimant, modified a provisional decree of the Governor of the State of Chihuahua, dated May 29, 1939, and published on August 5, 1939, under which 10,000 hectares of land had been taken from Lot No. 6. It is recited, however, in the Presidential Decree that provisional possession had not been given pursuant to the decree of the Governor.

This Commission has uniformly applied the rule that the minimum requirements for the existence of an agrarian claim under paragraphs (1), (2) and (3), section 3(a) of the Settlement of Mexican Claims Act of 1942, consist of a provisional decree of expropriation followed by the granting of provisional possession at a date within the period of time covered by the Commission's jurisdiction. Consequently it follows that the record before the Commission in this claim does not establish facts which would constitute a basis for a valid claim within the Commission's jurisdiction.

Claim is also made for depreciation in the value of the unexpropriated portion of Lot No. 6 as a result of the expropriation which occurred on January 7, 1942, as noted above. Inasmuch as the expropriation for which claim is made is found, as above set forth, not to be within the jurisdiction of this Commission, it is obvious that a claim for depreciation of remaining lands by reason of such expropriation is likewise not within our jurisdiction.

For the reasons set forth above, the Commission holds that the present claim is not within its jurisdiction. The Commission is therefore powerless to pass upon the merits of the claim. This decision is without prejudice to the right of the claimant to take any other steps which may be appropriate to seek indemnity for the losses alleged.

DECISION No. 53-E

AMC Docket No. 30. Claimant: James Alphonsus Murray. Amount claimed: \$74,252.57. Award: disallowed.

This is an agrarian claim in which claimant seeks indemnification for the expropriation of 9,440 hectares of land located in Lot No. 9 of the Babicora ranch situated about 150 miles west of the City of Chihuahua, State of Chihuahua, Mexico. The expropriation of the said area was effected by two Presidential Decrees, both of which were dated January 7, 1942.

Lot No. 9 was acquired by the claimant, an American citizen, by

purchase on or about March 27, 1931. Since that time the tract has been under lease to the Babicora Development Company.

The first Presidential Decree herein involved, which was issued on January 7, 1942, affected 5,000 hectares of land. This Presidential Decree modified a provisional decree of the Governor of the State of Chihuahua dated May 28, 1939. This latter-mentioned provisional decree, however, affected Lot No. 8 and did not affect Lot No. 9. Thus the portion of the claim based upon the expropriation of the above-mentioned 5,000 hectares did not arise prior to January 7, 1942. The jurisdiction of this Commission does not extend to agrarian claims which arose later than October 6, 1940. Accordingly this portion of the claim is not within the jurisdiction of this Commission.

The second expropriation involved herein, which was also effected by Presidential Decree dated January 7, 1942, relates to an area of 4,440 hectares taken from the claimant. The Presidential Decree in this case modified a provisional decree of the Governor of Chihuahua dated July 7, 1939, under which 4,800 hectares were taken from the claimant. It is recited in the decree of the President that provisional possession had not been given pursuant to the decree of the Governor. This Commission has uniformly applied the rule that the minimum requirements for the existence of an agrarian claim under paragraphs (1), (2) and (3), section 3(a) of the Settlement of Mexican Claims Act of 1942, consist of a provisional decree of expropriation followed by the granting of provisional possession at a date within the period of time covered by the Commission's jurisdiction. Consequently it follows that the record before the Commission in this claim does not establish facts which would constitute a basis for a valid claim within the Commission's jurisdiction.

Claim is also made for depreciation in the value of the unexpropriated portion of Lot No. 9 alleged to have been caused by the above-mentioned expropriations and by certain other expropriations which were the subject of claim, Agrarian Docket No. 142, filed with the Agrarian Claims Commission created under the Agreement of 1938 between the United States and Mexico. No allowance was made by the American Commissioner designated pursuant to that Agreement with reference to the item of depreciation included in the latter-mentioned claim, and claimant filed no petition for review of that action under the procedure provided in the Settlement of Mexican Claims Act of 1942. Instead, a similar item of claim is now presented for our determination. Inasmuch as the expropriations for which claim is made are found, as herein set out, not to be within the jurisdiction of this Commission, it is obvious that a claim for depreciation of remaining lands by reason of such expropriations is likewise not within our jurisdiction.

For the reasons set forth above, the Commission holds that the present claim is not within its jurisdiction. The Commission is therefore powerless to pass upon the merits of the claim. This decision is without prejudice to the right of the claimant to take any other steps which may be appropriate to seek indemnity for the losses alleged.

DECISION No. 120-E

AMC Docket No. 31. Claimant: The Laguna Company. Amount claimed: \$902,554.97. Amount awarded: \$286,665.98.

This claim in the amount of \$902,554.97 is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon the nullification of the claimant's title to 124,597 hectares of land located in the State of Campeche, and for severance damages to other of its lands; also damages to improvements connected with the operation of the entire tract.

The American nationality of claimant herein is established. It owns all the stock of the Laguna Corporation, a Delaware Corporation which is the operating company for its properties in Mexico and has an allotment of all of the losses suffered by said corporation. It also owns 4,996 shares of 5,000 shares of stock outstanding of the Compania de los Terrenos de Laguna, a Mexican Corporation which was the real estate holding company for its property in Mexico and has an allotment of 4996/5000ths of the losses of that corporation.

The ownership of property in Mexico by the last named Mexican corporation is established. The history of the title to this land is briefly as follows: On August 24, 1886, the Mexican Government made a contract with one Manuel S. Vila for surveying of lands in the State of Campeche. Under this contract Vila was to receive one-third of the area surveyed as compensation for his services. Rights under this contract were assigned on November 15, 1889, to one Luis Garcia Teruel who with Salvador Malo formed a partnership on December 2, 1889, known as Compania de Colonizacion y Deslinde de Terrenos Baldios, a Mexican Company. This company completed a survey of 1,666,980 hectares of land in the State of Campeche and on January 22, 1891, President Diaz granted to the said company title to one-third of the surveyed area or 388,993 hectares.

The Laguna corporation acquired by purchase on May 2, 1902, 153,376 hectares of land constituting the northern portion of the Vila tract above described. On April 30, 1902, the same company acquired a further tract of 86,015.3 hectares of land of which 2,221.4 hectares were derived from the Vila grant. It subsequently acquired a further tract of 2,971.4 hectares not involved in said grant. Thus the total holdings of the Laguna corporation were 242,363 hectares of which 155,597 may be referred to as Vila land and 86,765 hectares as non-Vila land.

By two Presidential Decrees, dated 1934 and 1938, respectively, 5,358 hectares of non-Vila land were expropriated. Thereafter by two Presidential Decrees both dated in 1939, 31,000 hectares of Vila land were expropriated under the Agrarian laws of Mexico. Claim for loss of these areas was made before the Agrarian Claims Commission, and an award was made for them. The 31,000 hectares were taken from the center of the Vila tract.

By a decree issued on January 2, 1940, and published in the *Diario Oficial* on February 28, 1940, the President of Mexico nullified all titles derived under the above-described contract

between the Mexican Government and Manuel S. Vila, including the title to the portion of the properties of the claimant herein derived under the Vila deed of 1891. The ground assigned for said nullification of titles was that the aforementioned contract between the Mexican Government and Manuel S. Vila was subject to revision under Article 17 of the Mexican Constitution of 1917. The decree further provided that persons holding titles in good faith could apply for the recognition of their titles.

On March 15, 1940, the Mexican Gulf Land and Lumber Company, another Mexican corporation whose holdings were affected by said nullification decree, filed amparo proceedings in the Second District Court in Mexico City against said decree. On March 19, 1940, the Laguna Company also filed amparo proceedings. On September 18, 1941, these two proceedings were consolidated. In 1941 both claimants undertook negotiations with the Department of Agriculture for the confirmation of their titles. The Second District Court, which had jurisdiction of the amparo proceedings, turned the deeds and titles over to said Department to assist in the negotiations. A proposed agreement between the claimants and the Mexican Department of Agriculture was drawn up but the President of Mexico refused to authorize the execution of said agreement and same did not become effective. No final agreement was concluded with the Government of Mexico concerning the property. The amparo proceedings were dismissed by the District Court and appeal was taken to the Supreme Court of Mexico. On February 18, 1946, the Supreme Court of Mexico dismissed the amparo proceedings, holding that the Mexican Gulf Land and Lumber Company in requesting confirmation of its title by the Department of Agriculture had recognized the nullification decree and therefore had no right to bring the amparo action. Said action was therefore dismissed on the merits. The Supreme Court also held that the Laguna Company had not filed its amparo proceeding within the prescribed time.

The record clearly establishes that the Presidential Decree of January 3, 1940, which nullified title to the lands owned by the claimant constituted a confiscation of private property without compensation. The United States has always maintained and supported the view that such action is below the standard of international law and is sufficient to give rise to an international claim. It is, however, normally required that the claimant pursue its local remedy against improper executive action. In the instant case the claimants pursued their remedies both before the Department of Agriculture and in the Mexican courts. The decision of the Supreme Court of Mexico, dated February 18, 1946, constitutes a complete exhaustion of the claimant's local remedies. This decision affirmed the Presidential Decree which had nullified the claimant's title.

This Commission has previously determined that where title to real estate has been nullified by Presidential Decree, and the claimants had pursued their local remedies in the Mexican courts, the claim arose at the time the decree of nullification was issued. (Claim of Will C. Hogg et al., Decision No. 11-C.)

Upon all the facts involved in this claim we find the liability of

Mexico to be fully established and are thus brought to the question as to the measure of damages.

The property of the Laguna Company, the claimant herein, constitutes one large roughly rectangular tract, except for an area in the center which was previously expropriated as above described. The land is covered chiefly with tropical jungle and has a very large growth of hardwood, especially mahogany and cedar. It also has zapote trees from which chicle is derived. The western portion of the tract, the title to which was not formally nullified and for which severance damage is sought, contains a considerable area of pasture land and land suitable for crops. The claimant constructed a railroad from Pital, a port located on the western end of the company's land and having access by water to the Gulf of Mexico, northeast and thence east for a distance of 59 kilometers. This railroad crosses the Mexican Government Campeche Railroad, which runs approximately north and south, near the center of the claimant's land. Lumbering operations were carried on by the claimant from before the beginning of World War I until 1925 at which time they were abandoned. Operations were resumed in 1937, but since that time they have not shown any substantial profit. Claimant has also, from time to time, engaged in stock raising and small operations in farm produce and rubber, but these activities appear to be relatively inconsequential in extent and not important in determining the value of the property. The principal source of income at all times has been the extraction of chicle.

In determining the value of the claimant's land at the time of the nullification of title on January 2, 1940, the Commission has examined the very extensive evidence filed by the claimant, including balance sheets and profit and loss statements showing the result of claimant's operations from 1918 to 1945 inclusive. The record shows that the claimant's profits for the entire period from 1919 to 1940 averaged \$57,479.40 per annum. However, profits declined severely after 1931 and did not thereafter recover. The average profit for the ten years preceding the nullification, that is 1931 to 1940, was \$20,900.24 per annum. The profit for the three years immediately preceding the nullification was very small indeed, the average for 1938, 1939 and 1940 was \$4,525.78 per annum. It appears to be the contention of the claimant that this decline in profits was due not only to the general decline in business but to social legislation and other governmental restrictions on its operations in Mexico. Without determining the correctness of this contention, it seems clear that such conditions and restrictions form part of the normal risk of doing business in a foreign country.

The Commission has also examined the evidence submitted by claimant's experts concerning the amount of hardwood timber located on the land, the title to which was nullified. As we pointed out in the claim of Long Brothers (AMC No. 3—Decision No. 23—Series E) the value of timber lands involves a consideration of a large number of factors in addition to that of the amount of available standing timber. After considering all these factors the Commission is of the opinion that the fair value of the claimant's

lands, the title to which is nullified, would be \$1.50 per hectare, or a total of \$186,895.50.

The claimant has also asked for severance damages to 81,407 hectares of land, contending that this area cannot profitably be worked apart from the very large tract of land affected by the nullification decree. We find, however, that said land constitutes one large tract and is adjacent to the company's seaport, so it is not separated from access to the outside world. There is no convincing evidence that the land is not large enough to be exploited for timber or for agricultural uses, or for any other purpose for which it could formerly have been operated by the claimant. The claim for severance damages is accordingly disallowed.

The company constructed improvements in order to exploit its property consisting of 59 kilometers of railroad not counting spurs, branches and switches, railroad rolling stock, equipment, shops and supplies; 84 buildings consisting of houses, offices, church, shops, hospital, school, etc.; various mills; water supply system; telephone system; electric light plant and lines; logging equipment and supplies; pastures and fences, roads, trails and camps.

By far the most expensive of the improvements is the railroad which was used chiefly in connection with lumber operations. These operations have been far less profitable than the chicle operations, and since the railroad is useful chiefly for lumbering purposes, its value accordingly is limited. After considering the nature of the improvements, their cost and their possible uses, the Commission is of the opinion that the value of the portion of these improvements located on the land the title to which was nullified and the damage to the remaining improvements resulting from the loss of such land, amounts to the sum of \$100,000.00.

As to the claim for interest on the award, it appears that claimant has been allowed to remain in possession of the land until the decision of the Supreme court of February 18, 1946, and that up to that time it has been allowed to conduct certain operations for the extraction of chicle and lumber. An allowance of interest is therefore deemed not proper.

The total of the amounts of damages above stated is \$286,895.50. The claimant is entitled to 4996/5000ths of that sum, or to \$286,665.98.

Accordingly, the claimant is awarded the sum of \$286,665.98, without interest.

DECISION No. 29-E

AMC Docket No. 32. Claimant: Katherine C. Meyer. Amount claimed: \$23,397.25. Award: disallowed.

This is an agrarian claim, in the amount of \$23,397.25, based upon the expropriation, under a Presidential Decree dated June 9, 1933, and published on August 2, 1934, of 627 hectares of land comprising a portion of a tract known as Mezquitita situated in the Municipality of Culiacan, State of Sinaloa, Mexico. This claim was not filed with any previous Commission although the claimant was advised by the United States Department of State

of her right to file her claim with the Agrarian Claims Commission.

Agrarian claims not previously filed, over which this Commission has jurisdiction, are described in paragraphs (1), (2) and (3) of section 3(a) of the Settlement of Mexican Claims Act of 1942. Since it is clear from the language of those provisions that a claim of this character based upon a Presidential Decree of expropriation dated June 9, 1933, and published on August 2, 1934, is not comprehended by any of those provisions, it follows that the Commission is without jurisdiction to pass upon the merits of the present claim.

Is it accordingly ordered that this claim be disallowed for want of jurisdiction.

DECISION No. 92-E

AMC Docket No. 33. Claimant: Charles H. T. Townsend. Amount claimed: \$5,000.00. Award: disallowed.

This is a claim in the amount of \$5,000.00 and is based upon the alleged expropriation of 100 acres of land, identified as Lot No. 70, in the subdivision known as Bajonea del Sur, situated on the north bank of the Fuerte River, about 4 kilometers from its mouth, in the State of Sinaloa, Mexico, under a Presidential Decree dated September 21, 1938, and published in *Diario Oficial* March 22, 1939.

The claim was first filed with the Agrarian Claims Commission, but no appraisal was made by that Commission due to lack of essential evidence.

The said Presidential Decree of September 21, 1938, expropriated 924 hectares of land described as "Bajonea Sur" in which is included said Lot No. 70. The decree named the owner of said expropriated land as Mae Gephart, who was the owner of record of said tract, her deed having been duly registered as required by the laws of Mexico. The claim of Mae Gephart was appraised by the Agrarian Claims Commission (Agrarian Docket No. 232). The appraisal, after acceptance by her, was certified as an award of the Commission. (Award No. 247, dated September 4, 1943.)

The claim now before the Commission is for losses allegedly sustained by Charles H. T. Townsend as a result of said Presidential Decree. He has furnished a document purporting to be a deed to said Lot No. 70, dated April 7, 1915, from Mae Gephart. Admittedly, claimant had not registered said document as required by the laws of Mexico pertaining to the registry of conveyances of real property.

One purpose of the laws requiring the registration of conveyances of real property is to enable third persons to determine the ownership of property as between rival claims thereto. Under the circumstances this Commission must rely upon the registry of conveyances in Mexico to determine the ownership of the above property as between the instant claimant and said Mae Gephart. For the purposes of an award for the expropriation, therefore, Mae Gephart is recognized as the owner of the land for which the instant claimant asks an award.

In consequence whereof, the Commission decides in this claim,

upon the evidence in the record, that Charles H. T. Townsend has failed to establish his ownership of Lot No. 70, as provided by the laws of Mexico.

This decision is made without prejudice to the rights, if any, that the instant claimant may have against the alleged vendor of the above-described property.

Accordingly, the claim of Charles H. T. Townsend is disallowed.

DECISION No. 123-E

AMC Docket No. 34. Claimant: Howard T. Oliver, personally, and as assignee and sole owner of The Oliver American Trading Co., Inc. Amount claimed: \$1,050,000.00. Award: disallowed.

This claim in the amount of \$1,050,000.00, plus interest from April 29, 1927, is before the Commission pursuant to the provisions of Section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the alleged refusal of the Government of Mexico, on April 29, 1927,

"to pay claimant the sum of \$700,000.00 and to arbitrate general damages of \$350,000.00 as agreed upon, to secure certain extensions of time to appear or be in default under attachment levied in an action in the Courts of the United States that sought to recover losses and damages involving the international responsibility of the Government of Mexico as a consequence of its wrongful interference with the railway-property of the Claimant to which the Government finally took title on April 16, 1928."

In his statement of claim filed with this Commission, claimant described the character and amount of claim as quoted above. The essential facts and contentions, briefly stated, are as follows:

During the revolutionary period in Mexico much of the rolling stock of the Mexican railways had been destroyed. To meet the resulting shortage and to provide facilities for increase of importation of American products into Mexico, Howard T. Oliver, herein referred to as claimant, organized in 1915 a corporation under the laws of Delaware, known as Oliver American Trading Co., Inc., for the purpose of operating locomotives and trains between points on the international boundary and points in the interior of Mexico. The claimant purchased certain locomotives from General Equipment Company, Inc., under a conditional sales contract. On or about March 1, 1920, claimant entered into a written contract with National Railways of Mexico, which was at that time under Government management and control, providing for the operation of claimant's trains under terms and conditions therein provided. By its own terms this contract expired on December 31, 1920. Thereafter claimant continued operations under an oral agreement. On June 29, 1921, claimant was notified by National Railways of Mexico that this oral agreement would terminate on the following day. For some weeks thereafter various negotiations were carried on between claimant and said National Railways. On September 3, 1921, twelve of claimant's locomotives were attached by the National Railways of Mexico to secure payment of 174,576.76 pesos which sum it was alleged claimant owed to it. On September 5, 1921, suit

was filed by the Federal District Attorney on behalf of said National Railways to recover said sum. While this proceeding was pending ten of the locomotives were released from the said attachment on the ground that they were the property of General Equipment Company, Inc., and had been sold by that company to the Mexican Government. On October 20, 1926, the Court entered judgment in said suit in favor of National Railways of Mexico, ordering claimant to pay the sum of 174,576.76 pesos. On March 11, 1927, the Court appointed appraisers to value the four locomotives which remained under attachment. On December 13, 1927, these appraisers filed a report placing a total value of 6,240 pesos on said four locomotives. Following various intermediate proceedings the Court on April 16, 1928 adjudicated said locomotives to the Government of Mexico.

In October 1922 following the institution of the aforesaid action against claimant, an action was commenced by claimant himself against the Mexican Government and the National Railways of Mexico in the Supreme Court of New York, Rockland County, and in said action had attached funds and property of the Mexican Government in New York. This suit was removed to the United States District Court for the Southern District of New York upon motion of the defendants. While the suit was nominally against both the Government of Mexico and the National Railways of Mexico, it was in reality a suit only against the Mexican Government, which, on December 4, 1914, had taken over the operation and control of said Railways. This operation and control continued until December 31, 1925. The amount sued for was \$1,064,348.90, predicated upon the same items of alleged damage as those which gave rise to this claim.

After the transfer of said action to the United States District Court, Mexico moved to dismiss the same on the ground that a foreign government was immune from suit in the United States Courts. This motion was argued on January 23, 1923. On August 31, 1923, the Government of Mexico was recognized by the United States and on October 11, 1923 said motion to dismiss was granted on the ground that Mexico was a free and sovereign state, was immune from suit in Courts of the United States and that such courts were without jurisdiction to entertain such suits.

This ruling of the District Court was appealed to the United States Supreme Court which ordered the appeal transferred to the Circuit Court of Appeals (264 U.S. 440).

The Circuit Court of Appeals held that the treaty of September 8, 1923, which established the General Claims Commission

"provides a remedy which the Courts do not afford; that the two Governments have not left their citizens remediless; that National Railways of Mexico is merely a name for a system of railways in possession of the Mexican Government which had been operated by it since 1914 for national purposes like the postal or customs services in the performance of a fundamental governmental function."

It also held that:

"The recognition recently accorded the Government of Mexico . . . was complete and unconditional,"

and that the Mexican Government was immune from suit in the courts of the United States (5 Fed. 2nd 659). Mandate affirming the District Court was filed on December 22, 1924. The United States Supreme Court on March 4, 1925, denied the application for a writ of certiorari (267 U. S. 596).

Thereupon the attachment on funds and property of Mexico which had been maintained pending final determination of claimant's cause of action was released.

During the pendency of the aforesaid action in the United States District Court, the Mexican Government and claimant entered into negotiations for a settlement of claimant's demands against Mexico. Claimant alleges that an agreement for such a settlement was reached on or about January 2, 1923. The alleged agreement however was not reduced to writing but claimant has submitted certain secondary evidence in an effort to establish the terms thereof. The most important item of this evidence is an affidavit by William E. Sims, Attorney for claimant in the negotiations with Mexico, dated April 1, 1927. In this affidavit Mr. Sims states:

"While I cannot recall the exact language that was used or the exact date of the conference, my best recollection is that it was agreed that the part of the Oliver American Trading Company's claim which was susceptible to exact proof, amounting to about \$700,000.00, was admitted by the Mexican Government and that they were to pay that amount without further question upon being shown the vouchers and other proof which evidenced it. This I was given to understand was desired by the Mexican Government not by reason of any doubt which they entertained as to the correctness of the amount stated but in order that their records might show fully the details upon which the settlement was based. As to the remainder of the claim, amounting to some \$350,000.00, which may be described as unliquidated, covering damages sustained by the corporation from loss of future business, loss of good will, etc., this was to be submitted to arbitration and there was more or less discussion as to the manner in which this arbitration was to be held."

Mr. Sims also stated:

"This arrangement was reached either the very end of December (1922) or the first day or two in January (1923). But it happened that the time of the defendants to appear in the suit was about to expire and on January 4th, a stipulation was entered into extending the defendant's time to appear until January 13th. This extension was granted only after I had become convinced that the Mexican Government intended to go ahead with the settlement as above described and the stipulation was granted solely upon that understanding and in that belief.

"A little later Mr. Hess left Mexico City to return to New York and I was told by some one of the defendants' counsel that he was bringing with him full power and authority to go ahead and arrange the settlement upon the lines which we had discussed."

On the basis of this affidavit and a copy of a telegram dated December 22, 1922 from a Mr. Pesqueira to Mr. Felix, the financial agent of Mexico in New York, the Government of the United States prepared an *aide memoire* concerning the Oliver claim which it submitted to the Mexican Ministry of Foreign Affairs on April 12, 1927. On April 29, 1927, the Mexican Department of Foreign Relations informed the United States Embassy that it rejected the claim which had been advanced by Mr. Oliver. It stated:

"As for the antecedents which it is sought to adduce as a basis for the direct settlement of this matter between Oliver and the Mexican Government, the Department of Foreign Relations hastens to declare that Senor Pesqueira, in relation to this case, was not commissioned either officially or unofficially to settle it, as it was still pending settlement in the American courts at the time to which the telegram copied refers, and, therefore, his acts have no obligatory force whatever for the Mexican Government.

"It seems useless, moreover, to qualify the importance as proof of a sworn declaration of lawyers for Oliver who in his name and at his expense intervened in the said case."

In a statement of claimant to the Department of State, under date of December 13, 1926, referring to the alleged agreement of settlement of January 2, 1923, claimant says:

"Said agreement was ignored and abandoned upon the obtaining of an extension of time in the civil action then pending in the United States, which extension was improperly requested and obtained. The amount agreed upon was six hundred thousand dollars, and to arbitrate general damages of three hundred and fifty thousand dollars. The repudiation of said telegraphic agreement constitutes another violation of international practice which rests on the good faith of Government."

Claimant contends that the rejection of his claim as submitted in the *aide memoire* mentioned above constituted a repudiation of the alleged settlement of January 2, 1923, and was therefore a denial of justice as of April 29, 1927, the date of said rejection. The facts concerning the alleged settlement have been set forth above. There is no doubt that there were negotiations for a settlement between Mr. Sims, on behalf of claimant, and Mr. Hess, on behalf of the Government of Mexico. Mr. Sims may have believed they had arrived at a formula for settlement which would be satisfactory to their principals. It appears that claimant was willing to accept the formula as he understood it. There is no competent evidence, however, that the Government of Mexico, or any one having authority to make a final and binding agreement for it, ever agreed to the settlement. Thus it is clear that the rejection of the claim on April 29, 1927, by the Government of Mexico gave rise to no claim against it.

In the foregoing circumstances, the Commission holds that claimant has failed to establish a valid claim within the Commission's jurisdiction.

DECISION No. 76-E

AMC Docket No. 36. Claimants: Craven E. McCarty and William C. Lucas. Amount claimed: \$7,200.00. Amount awarded: \$6,739.88.

Claimants herein ask damages in the amount of \$7,200.00 for the expropriation of 742 hectares of land and for the depreciation of the value of 3,629 hectares of other land owned by them as equal partners in the District of Alamos, State of Sonora, Mexico. Included in the amount of the above claim is an item of \$300.00 for expenses and one for the value of 150 head of cattle said to have died because the seizure of the land cut them off from their water supply.

These claimants filed a claim with the Agrarian Claims Commission (Docket No. 54), and they refer to such claim for evidence as to their ownership of the property, their partnership agreement, the value of the property and the nationality of the claimants. It is alleged that although the appraisal by the American Commissioner appointed under the terms of the Agrarian Claims Convention of 1938 was accepted by claimants, the value placed on the property was not adequate.

The Commission finds that the claimants have furnished satisfactory proof of their American nationality, their ownership of the property involved in this claim and of their equal interest therein.

The expropriation of the 742 hectares of land was under a Presidential Decree dated April 16, 1938, published August 28, 1940. Claimants allege that they continued to enjoy possession of the property until approximately September 10, 1940, when formal notice of the decree was given them by mail, and that they had no notice of the decree until that date. The Commission holds that claimants are bound by constructive notice under the publication of the decree, on August 28, 1940, as aforesaid, and that for jurisdictional purposes, the claim arose on that date. (See Decision in Lamm claim, Decision No. — Series E). Interest on any award rendered is allowable, however, from the date that claimants actually lost possession of the property, to wit, September 10, 1940. The value of the property and the rate of exchange which must be used to compute such value in terms of United States currency must nevertheless be fixed as of the date of the Presidential Decree, or April 16, 1938.

Claimants have furnished considerable evidence as to the value of the property and as to the use made thereof. A small portion of the land had been cleared and claimants allege that such land was in cultivation and producing crops of cotton, corn and peanuts yielding an annual return of about \$1,300.00. However, the property was for the most part used as a cattle ranch, resting as it did, in a valley, the water supply being located in the center of the property and the outer edge of the property extending into the mountains. This mountain land was suitable for seasonal grazing during that part of the year when the lowland was available for pasture and water.

From the evidence submitted by claimants, as well as the evidence furnished in claims for loss of similar land in that section of Mexico, it would appear that it would be fair and

reasonable to fix a value of 60 pesos per hectare for the cleared valley land, 20 pesos per hectare for the valley pasture land and 5 pesos per hectare for the mountain pasture land.

The evidence submitted as to the damage for the depreciation of the land not taken is not entirely satisfactory. However, evidence that has been submitted is supported by an examination of the official blue prints of the entire ranch and the two expropriations so that it appears clear that the area actually taken includes the water supply and the center of the property leaving the claimants with but little land except that in the mountains. In the circumstances, the Commission must resort to an estimate of the severance damage, and upon such basis determines the damage to be 50% of the value of the land.

The item of \$300.00 for expenses is not deemed a proper item of damage and no allowance is made therefor. The item of loss for the 150 head of cattle is not supported by convincing evidence, it not being shown that such cattle could not have been removed and sold.

Upon consideration of the entire record, the Commission finds that the fair and reasonable award to claimants should be computed as follows:

	<i>Pesos</i>
49 hectares cleared valley land at 60 pesos per hectare.....	2,940.00
693 hectares valley pasture land at 20 pesos per hectare.....	13,860.00
50 percent depreciation on 100 hectares valley pasture land worth 20 pesos per hectare	1,000.00
50 percent depreciation on 3,529 hectares mountain pasture worth 5 pesos per hectare	8,822.50
	<u>26,622.50</u>

The sum of 26,622.50 pesos, converted into dollars at the rate of exchange existing on April 16, 1938 (3.95 x 1) amounts to \$6,739.88, of which each claimant is entitled to an equal share, as follows:

To Craven E. McCarty.....	\$3,369.94
To William C. Lucas	\$3,369.94

which amounts shall carry interest from September 10, 1940.

DECISION No. 17-E

AMC Docket No. 37. Claimant: Cornelia L. Wakeman. Amount claimed: \$24,200.00. Award: disallowed.

This is a claim in the amount of \$24,200.00 based upon the alleged seizure by agrarians in 1929 of 800 acres of land comprising a part of the hacienda Santiago de la Pena, situated near the City of Tuxpan in the State of Veracruz, Mexico.

Claimant has submitted no evidence that this land has been expropriated by the Mexican Government or that said Government has taken any wrongful action with respect to this property, or that said Government has in any way failed to protect the rights of the claimant.

The claim is, therefore, disallowed.

DECISION No. 32-E

AMC Docket No. 38. Claimant: Thaxton A. Ballance and Eva K. Ballance. Amount claimed: Not stated. Award: disallowed.

This is an agrarian claim in an unstated amount. It is based upon the alleged expropriation of portions of a tract known as Demasias de Santa Teresa, situated about 25 miles southwest of the city of Hermosillo, State of Sonora, under a Presidential Decree dated May 29, 1930, and published June 30, 1930, declaring the title to said property to be null and void. The conveyance of the property to claimants was on February 5, 1931. The claimants were, therefore, not owners of the property at the time of the issuance and publication of the decree of nullification in 1930 upon which the claim is based. The deed cannot be treated as an assignment of the claim. (*Compania Agricola la Esmeralda*, Decision No. 50, Series D.)

The claim is, therefore, disallowed.

DECISION No. 108-E

AMC Docket No. 39. Claimant: Mexican Coal and Coke Company. Amount claimed: \$2,903,068.98. Amount awarded: \$22,696.96.

Claimant, a defunct New Jersey corporation, has combined two separate claims. The first is for \$2,045,470.35 based upon an alleged denial of justice. The second asks \$857,598.63 for losses allegedly sustained as a result of an agrarian expropriation by a Presidential Decree dated August 7, 1940, affecting 7,353 hectares of land situated in Coahuila, Mexico.

In the first claim it is alleged that a labor union imposed such conditions as to wages, indemnities, sick benefits, etc., as to make the operation of claimant's mine unprofitable. It is also alleged that the union took over the mines and operated them as a cooperative enterprise. The evidence relied upon in support of the above allegations is in the form of affidavits of the President of the company, Mr. Robert A. Foster, and of correspondence with the United States Department of State. The evidence indicates that claimant acquired certain coal lands known as Las Esperanzas in the State of Coahuila, Mexico. Mines located on such property were operated by the claimant, but little information is furnished as to the profits derived therefrom. About 1934 the labor union to which mine workers belonged submitted demands for higher wages, indemnities, sick benefits and other conditions concerning the operation of the mines. As a result of meeting these demands, the operation of the mines became unprofitable. It appears that extensive negotiations with the union and various governmental authorities ensued. The company did not operate the mine after November 1937. Mr. Foster states that the company did not pay the workers their wages for the last week in October and the first week in November. Thereafter the mine was taken over by the union and operated as a cooperative enterprise. He also asserts that an armed mob drove the officers of the company away from the property and that the company was forced into involuntary bankruptcy. It is contended that although the Mexican Bankruptcy Law required that a recognized representative of the company be appointed receiver, a former worker was in fact appointed receiver and that improper claims against the company were allowed. Officers of the claimant company were prevented from appearing to resist the allowance of such claims.

The action of the union in making the aforementioned demands concerning working conditions and wages may have resulted in making the operation of the mine unprofitable, but such action is a recognized right under the municipal law of most modern nations. The result flowing from such action, moreover, is generally regarded and accepted as a normal business risk. Under international law a government normally is not responsible for the acts of private individuals. II Charles Cheney Hyde, *International Law* (1945) 938. The evidence submitted to support the attack upon the involuntary bankruptcy proceedings is insufficient to establish responsibility on the part of the Mexican Government for any losses which may have been sustained by claimant as a result of such proceedings.

It is also alleged that the "coal concession" of the company was cancelled, but claimant has furnished no evidence to support this portion of the claim.

For the foregoing reasons the first claim asserted by claimant is disallowed.

The second item of claim for losses resulting from the expropriation of land finds support in the evidence submitted. The Presidential Decree dated August 7, 1940, deprived claimant of 7,353 hectares of land, out of the total holdings of 9,073.75 hectares acquired by the company about 1899. The decree recites that the taking of the land for agrarian purposes does not affect the exploitation of the coal under such land, and exempts certain areas around the mining improvements. Claimant, however, asks for the entire book value of the coal lands, thus indicating that it considers that the expropriation included the coal deposits, as well as the surface lands.

The law, as it existed at the time the corporation acquired the lands in question, provided that the ownership of the surface included all deposits of coal under the surface. By the Constitution of 1917 all sub-soil rights to coal deposits, among other minerals, were vested in the nation. Under the mining laws those having sub-soil rights to coal by virtue of a surface title acquired prior to the adoption of the new constitution, might retain such property rights under concessions. (Article 46 Mining Law of May 3, 1926; Article 18 Mining Law of August 2, 1930). Presumably, the claimant acquired such concession, but it has neglected to furnish any definite information as to such concession or any evidence concerning any cancellation thereof. In any event, it does not appear that the expropriation of the surface for agrarian purposes would have had any effect on the coal rights of claimant under the terms of the Mexican laws or under the terms of the expropriation decree of August 7, 1940.

The evidence as to the value of the land and of its coal deposits is unsatisfactory. It is stated that the books of the company carried such property at a figure of 2,116,588.02 pesos. How such an amount was determined is not explained. Affidavits of a Mexican engineer and of a Mexican student are offered as to value of the land for agrarian purposes. One of such affidavits fixes a value of \$40 per hectare. In a subsequent letter claimant indicates that the value was intended to be placed at \$100 per

hectare. This letter contains a rather vague statement as to the value of irrigated land. However, there is no evidence that the land involved herein was irrigated.

From a careful consideration of the record, we conclude that the land in question might fairly be valued, for agrarian purposes, at 20 pesos per hectare for temporal land and 15 pesos per hectare for grazing land. No satisfactory evidence is furnished as to the classification of the land actually expropriated, and the Commission, under such circumstances, feels constrained to follow the classification as given in the expropriation decree. Such decree states that 411 hectares were arable land and that 6,942 hectares were grazing land. At the valuations above mentioned the expropriated land would be evaluated at 112,350 pesos.

This sum, converted into dollars at the rate of exchange prevailing on August 7, 1940 (4.95×1) amounts to \$22,696.96.

The claimant herein, the Mexican Coal and Coke Company, is accordingly awarded the principal sum of \$22,696.96 with interest thereon from August 7, 1940, according to the provisions of Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 30-E

AMC Docket No. 40. Claimants: I. R. and Eva Z. Clark. Amount claimed: \$2,800.00. Award: disallowed.

This claim in the amount of \$2,800.00 is before the Commission pursuant to section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

It is alleged that four city blocks in the town of Columbus, Tamaulipas, and 100 acres of land near said town belonging to claimants had been "taken over by agrarians" in 1931, but that this was unknown to claimants until 1943; that the city blocks are now occupied by a post office and school building erected with money supplied by the Federal Government of Mexico, a ball park erected by the municipality of Columbus, and by residences erected by residents of Columbus; that the suburban lands are being used by the inhabitants for grazing purposes.

Nationality of claimants is established. However, the evidence submitted is wholly insufficient to establish any expropriation of said property, or any act in relation thereto which creates international liability on the part of the Mexican Government. Moreover, it appears from an independent investigation made by the Commission that claimants have made voluntary conveyances of the property involved in this claim.

The Commission concludes that the evidence in the record does not warrant an award and accordingly holds that the claim must be disallowed.

DECISION No. 114-E

AMC Docket No. 41. Claimant: Cunningham Investment Company. Amount claimed: \$150,000.00. Amount awarded: \$11,148.49.

This is a claim for \$150,000.00 alleged to be the value of the hacienda La Concepcion, comprising 15,256 hectares of land and situated in the Municipality of Ciudad del Maiz, State of San Luis Potosi, Mexico. The claim is based upon three expropriation decrees. These decrees affecting only 4,457 hectares of land are more fully described hereinafter.

According to evidence filed with the Special Mexican Claims Commission, (Docket No. 537) claimant is a corporation organized under and by virtue of the laws of Utah and the officers and directors, as well as the stockholders, are citizens of the United States. Thus the American nationality of claimant is established in a satisfactory manner at all times pertinent to this claim. Claimant's ownership of the property is likewise established.

The first decree described in the claim in one depriving the claimant of 909 hectares of land. The Governor's Decree was dated February 6, 1932, and published May 8, 1932. This was confirmed by a Presidential Decree, the date of which is not given, but which is alleged to have been published on March 22, 1934. As claimant intimates in the statement of claim, this item of loss is not within the jurisdiction of this Commission. Consequently no award may be made therefor.

The second decree was that of the Governor taking 1,200 hectares of land. Said area was increased to 2,700 hectares by a Presidential Decree, dated October 6, 1937, which was published November 7, 1939. The third decree described in the claim, expropriating 848 hectares of land, was that of the Governor, dated August 1, 1938. This was confirmed by a Presidential Decree dated August 3, 1938 and published May 7, 1940.

There is nothing in the record to indicate that claimant knew or could have known of the last two expropriations prior to the publication of the Presidential Decrees. We have held such publication to be constructive notice of the expropriations effected thereby. Under the rule set forth in the Lamm Claim (Decision No. 79—Series E) these last two items of claim arose when claimant had notice of such expropriations. Both dates of publication are within the jurisdiction of this Commission. The valuation, in each item of claim, will be fixed as of the date of the Presidential Decree, but awards will draw interest from the dates when the respective items of claim arose, namely, the dates of publication.

Claimant has stated that the land, purchased in 1905, represented an original investment of \$60,000.00. The deed of conveyance, however, recited the consideration as 30,000 pesos. Evidence as to value of similar land in that part of Mexico has been consulted and the Commission has made an inspection of land near that of claimant and bearing the same general description.

Accepting the classification of the land as given in the decrees of expropriation, we conclude that a fair and just valuation thereof would be 50 pesos per hectare for the seasonal cultivated land, 30 pesos per hectare for the tillable pasture land, and 10 pesos per hectare for the mountain grazing land. Computed upon said basis, the land involved herein may be evaluated as follows:

As to the Decree of August 3, 1938:

	<i>Pesos</i>
196 hectares seasonal cultivated land at 50 pesos.....	9,800.00
52 hectares tillable pasture land at 30 pesos.....	1,560.00
600 hectares pasture land at 10 pesos.....	6,000.00
	17,360.00

On August 3, 1938, the rate of exchange was 4.90 x 1, so that amount converted into dollars would be \$3,542.86.

As to the Decree of October 6, 1937:

2,700 hectares pasture land at 10 pesos.....27,000.00 Pesos

On October 6, 1937, the rate of exchange was 3.55 x 1, so that amount converted into dollars would be \$7,605.63.

The claimant herein, Cunningham Investment Company, is, therefore, awarded the principal sum of \$11,148.49, with interest from dates of expropriations.

DECISION No. 13-E

AMC Docket No. 42. Claimant: Jalapa Railroad and Power Company. Amount claimed: \$1,464,566.51. Amount awarded: \$653,930.66.

This is a claim for money due claimant under a contract with the State of Veracruz dated May 28, 1926. Under said contract claimant sold to the State of Veracruz certain railroad and electric light property located in said State. The amount claimed is \$1,464,566.51, said to be the equivalent of 2,937,946.87 pesos.

Claimant alleges that the arbitrary nullifications by decrees of the Legislature of the State of Veracruz in 1931 and 1938, respectively, of clauses twelfth and seventh of the said contract without recourse to the courts, were confiscatory breaches of said contract and constituted denials of justice. Claimant further alleges that a decision of the Supreme Court of Justice of Mexico on October 5, 1937, approving the decree nullifying clause twelfth of the contract, was in violation of Mexican constitutional and legal provisions and constituted a further denial of justice for which the Mexican Government is responsible.

The facts are substantially as follows:

The Jalapa Railroad and Power Company, claimant herein, is an American corporation organized under the laws of the State of New Jersey on July 7, 1897.

Under date of February 14, 1898, claimant acquired from Juan V. Frisbie y Compania, with the approval of the Mexican Department of Communications and Public Works, a concession which had been granted on August 3, 1895, to Frisbie y Compania by the Mexican Government.

By decree dated September 3, 1925, the Legislature of the State of Veracruz had authorized the Governor to contract on behalf of the State a loan not to exceed 3,000,000 pesos for material and cultural works and the promotion of agriculture. Said decree further provided that the loan be guaranteed by allocation of a portion of the State's participation in the Federal tax on petroleum.

On January 30, 1926, the State Legislature of Veracruz authorized the Governor to negotiate a contract for the purchase, on behalf of the State, of claimant's properties for a sum not to exceed 2,000,000 pesos. Such contract was entered into with the approval of the Federal Government on May 28, 1926. The consideration for the sale was 1,800,000 pesos to be paid in monthly installments of 100,000 pesos each, with interest at 6 percent annually. By Clause 12 of the contract 5 percent of the Federal tax on petroleum (which was one-half of the State's

participation in such tax) was pledged to the payment of the purchase price of claimant's property.

On September 17, 1926, the Legislature of the State of Veracruz authorized the Governor to form a corporation with a capital up to 4,000,000 pesos (51 percent of the shares of which were to be owned by the State) to take over certain properties including those acquired from claimant.

It is shown that the participation by the State of Veracruz in the Federal petroleum tax referred to above amounted to 2,357,843.37 pesos from July 1, 1926 to December 31, 1927 and from August 1, 1928 to November 30, 1929. As noted above, *one-half* of that sum was, under the terms of the contract of May 28, 1926, to be applied to the payment due claimant thereunder.

By contract dated April 18, 1931, the State of Veracruz transferred the property acquired from claimant to a labor union known as the *Cooperativa de Luz, Fuerza y Transportes de Jalapa, S. C. de R. I.* The price to be paid under this contract was 2,080,718.54 pesos, payable 100,000 pesos annually, with 6 percent interest.

On November 28, 1931, the Legislature of the State of Veracruz issued a decree declaring *Clause 12* of the contract of May 28, 1926, between claimant and the State to be void and of no value. The decree contains no statement as to the reasons underlying such action.

On December 14, 1931, claimant instituted *amparo* proceedings in the Fifth District Court in Mexico City against the above-mentioned decree of November 28, 1931. The proceedings were later transferred to the Second District Court in Veracruz which on August 5, 1932, denied claimant any relief. An appeal was taken to the Supreme Court of Mexico, and October 5, 1937, said Court affirmed the decisions of the lower courts. The basis of the decisions by the courts was that the Governor, in pledging the State's participation in the Federal petroleum tax in payment of the property, had exceeded his authority and that the Legislature had the authority to declare such action void.

Under date of June 30, 1938, the Legislature of the State of Veracruz issued a decree affecting clause seventh of the contract by reducing the amount of the purchase price and eliminating the provision for the payment of interest. Claimant again sought an *amparo* against the action of the Governor but was denied relief by the Second District Court on October 20, 1938. The Supreme Court of Mexico, in a decision of June 16, 1939, reversed such action, holding that the Governor was without power to change the amount of the consideration agreed upon in the contract of May 28, 1926, or to eliminate the item of interest therefrom.

Claimant admits that it has been paid up to November 3, 1936, on account of the contract, a total of 514,453.13 pesos. No payments have been received since that date.

The claim is formulated on the following basis:

Purchase price	Pesos	1,800,000.00
Interest at stipulated rate of 6 percent per annum	Pesos	
from July 27, 1926 to November 19, 1941.....	1,652,400.00	
Payments by State of Veracruz applicable to interest	514,453.13	
		1,137,946.87
Total damages sustained by claimant.....		2,937,946.87

It is not disputed that the Veracruz Government acquired physical possession and title to claimant's property under the aforesaid contract and that said property has been forever lost to claimant. Also, there is no dispute as to the purchase price or as to the amount of the payments made thereunder.

In the circumstances, the issue for determination is whether the breach of contract alleged to have resulted from the nullification of clause twelfth of the contract was an ordinary one involving no international responsibility or whether said breach was effected arbitrarily by means of a governmental power illegal under international law.

We deem it to be unnecessary to consider the effect of the decree of the Legislature dated August 10, 1938, modifying clause "seventh" of the contract by reducing the purchase price and eliminating the provision for the payment of interest, since said decree was held invalid by the Supreme Court of Mexico, as aforesaid.

However, the effect of the act of the Legislature of Veracruz under its decree of November 28, 1931, and of the decision of the Supreme Court of Mexico of October 5, 1937, was to strike down the pledge of, and to render unavailable for the payment of the debt owing to the claimant, the funds derived by the State of Veracruz from the Federal tax on petroleum. In the statement of claim sworn to by claimant's president it is stated, with reference to said pledge of taxes, that: "Said security was a vital element of consideration upon which claimant heavily relied when it entered into the contract of May 28, 1926."

The proof clearly establishes that the contract for the sale of the property was made pursuant to the decree of the Legislature of Veracruz dated February 2, 1926, as aforesaid. The Governor was expressly authorized to pledge the funds derived from the Federal tax on petroleum by the decree of said Legislature dated September 3, 1925. The Governor reported to the Legislature in his annual report of 1926 that the State had acquired claimant's property and that it was receiving the income therefrom. Partial payments on account of the purchase price had also been made by the State to claimant prior to November 28, 1931, when clause twelfth was nullified, and for some time thereafter. Under these circumstances, the 1931 decree of the same Legislature, nullifying the pledge of the funds received from the petroleum tax for the payment of the purchase price, was clearly not an ordinary breach of contract. Here the Government of Veracruz stepped out of the role of contracting party and sought to escape vital obligations under its contract by exercising its superior governmental power. Such action under international law has been held to be a confiscatory breach of contract and to constitute a denial of justice.

In Frederick S. Dunn's *The Protection of Nationals* (1932) there is discussed the distinction between an ordinary breach of contract and one wherein a breach is effected by the arbitrary action of a governmental power. He states at pages 164-167:

"... It should be noted that, in its actions on its contracts with private individuals, a government may act in two dif-

ferent ways: (1) as a private individual or corporate contractor would act; and (2) as a sovereign and supreme power . . .

"On the other hand, if a government is free to have recourse to its sovereign power to escape its obligations under a contract with a private individual, then doing business with governments on a contractual basis becomes a wholly uncertain thing, so far as the private contractor is concerned. No matter how he should seek to safeguard himself in the terms of the contract against possible loss, the state might, through the exercise of its supreme governmental power, overturn all his calculations. Private contractors could not safely do business with governments on any such terms.

"It appears to be the consensus of opinion that private contractors should not be expected to take the risk of such action on the part of the other contracting party. So long as the state remains within its character as a contracting party and does not take advantage of its superior governmental power to escape its obligations, then the private contractor is usually left to sustain whatever losses may accrue from the contract. But when it steps out of that character and takes action that a private contractor could not take, in order to escape its obligations under the contract, then it upsets the contractual basis and pursues a course of action that is quite incompatible with normal business relations; for example, if it declares the contract void by its own decision, or seizes property belonging to the other party to the contract, or declines to submit to suit thereunder, or seeks to alter the terms of the contract without the consent of the other party. . . .

"If one examines these cases carefully, one finds that, so far as they can be said to contain any common ground at all, it is the feature of the use of governmental power to defeat the obligations of the contract. The types of cases set forth are as follows: (1) failure to provide adequate remedies in the local courts against breaches by the state; (2) arbitrary annulment by the contracting government without recourse to a judicial determination of the terms of the contract or of the legality of the government's act; and (3) various other 'arbitrary' acts by the contracting government resulting in loss to the private contractor. In all of these cases the distinguishing feature is an interjection of governmental power to alter the situation envisaged in the contract. To the extent that one party to a contract is able to do this without the consent of the other party, the expectations created by the contractual relation are defeated. Hence it would seem that the test suggested has in fact played an important part, consciously or unconsciously, in controlling the course of decisions in past cases."

In Eagleton's *Responsibility of States in International Law* (1928) 165-166, it is stated:

"Similarly, the state may be held responsible for confiscatory breaches of contracts. The United States has often

intervened on this account; and such intervention has been justified as against a tortious, rather than against a contractual, injury. It has been said that the United States today requires 'that a breach of contract must constitute also a tort in order to be regarded as internationally illegal conduct'; and the diplomatic correspondence includes various statements in which this term of private law is introduced into the realm of international law. In these cases, the basis for the claim is to be found in the fact that the circumstances accompanying the breach of the contract constitute in themselves internationally illegal conduct."

To the same effect see Borchard's *Diplomatic Protection of Citizens Abroad*, p. 293; *Singer Sewing Machine v. Turkey* (Neilsen's *Opinions and Reports*, p. 491); American-Venezuelan Commission of 1903 (Ralston's *Report*, p. 182); "El Triunfo Case" (*Foreign Relations of U. S.*, 1902, pp. 838-880; American-Venezuelan Commission of 1903 (Ralston's *Report*, p. 200, in the *Turnbull, Manoa Company, Ltd., and Orinoco Company, Ltd.*, case); Freeman, *The International Responsibility of States for Denial of Justice* (1938) p. 112, and Shufeldt case (Hackworth's *Digest of International Law*, Vol. V, p. 485).

The decision of October 5, 1937, holding that the Governor had no authority to pledge the funds derived from the Federal petroleum tax clearly disregarded the fact that such authority had been conferred upon him by the legislative decree of September 3, 1925, and that in any event, the contract with claimant had been effectively ratified for over five years prior to the 1931 decree, by payments made thereunder and the other action taken with respect to the property. (Articles 1525, 2267 and 2272, Civil Code of Veracruz) Moreover, according to the testimony in the record, said decision, approving as it did, a nullification of a material portion of a contract by legislative fiat, was in direct contravention of the Supreme Court's previous holding in five consecutive cases that "only courts of justice may declare administrative contracts to be rescinded." Said decision was violative of the Organic Law of Articles 103 and 107 of the Federal Constitution of Mexico of October 18, 1919 (Law of Amparo of 1919) in force from October 22, 1919 to January 19, 1936, which provides:

"Article 148.—The final judgments of the Supreme Court of Justice voted by a majority of seven or more of its members constitute jurisprudence [*i. e.*, case-law], provided the matter decided in them is so decided in five final judgments, not interrupted by another to the contrary.

"Article 149.— . . . The Supreme Court shall respect its own final judgments. It may, however, reverse the jurisprudence [*i. e.*, case-law] established; but expressing always in this case the reasons which it has for deciding to do so. These reasons must be related to those which it had in mind for establishing the jurisprudence [*i. e.*, case-law] which is reversed."

The Organic Law of Articles 103 and 107 of the Federal Con-

stitution of Mexico of December 30, 1935 (Law of Amparo of 1935) in force since January 10, 1936, provides:

"Article 195.—The Supreme Court shall respect its own final judgments; it may, however, reverse the jurisprudence [*i. e.*, case-law] established provided it expresses the reasons which it has for varying it, which reasons must be related to those which it had in mind for establishing the jurisprudence [*i. e.*, case-law] which is reversed.

"Transitory Article 7.—The jurisprudence [*i. e.*, case-law] established by the Supreme Court of Justice up to the date in which this Law becomes in force shall be binding as provided by Article 194 thereof; and may only be reversed in the manner provided by Article 195."

The Supreme Court in its decision of October 5, 1937, gave no reasons for reversing the established law as expressly required under said provisions of the constitution.

The action of the Supreme Court in withholding a decision for over five years is also shown to be in violation of Mexican law. The Law of Amparo of 1919 required a decision within fifty days and the 1935 Amparo Law required a decision within ten days.

Upon the entire record, we are constrained to hold that the action of the Legislature in nullifying clause twelfth of the contract by its decree of November 28, 1931, constituted an arbitrary and confiscatory breach of contract, and that the decision of the Supreme Court of October 5, 1937, approving such action constituted a denial of justice which imposes responsibility upon the Mexican Government.

Claimant's failure to resort to the courts for the enforcement of the payments under the contract poses the additional question as to whether it had exhausted its remedies under local laws. The general rule that local remedies must be exhausted before diplomatic intervention is justified is subject to several exceptions. In *The Law of Responsibility of States for Damage Done in their Territory to the Person or Property of Foreigners*, prepared by the Research in International Law, Harvard Law School, it is stated that:

"The requirement of exhausting local remedies has been dispensed with by the Department of State when the action of the higher officials or authorities of the foreign government causing the injury has been arbitrary and unjust, and there appeared to be no adequate ground for believing that a sufficient remedy was afforded by judicial proceedings. The same principle has been applied by international arbitral commissions." 23 A.J.I.L. Spec. Supp. (1929) 155.

Obviously the acts of the Veracruz Legislature were those of "higher officials." Their acts caused injury to the claimant and were violative of international law. In addition to enacting the 1931 decree, they enacted the aforesaid decree of 1938, reducing the purchase price and eliminating the provision for interest. Such action taken twelve years after the making of the contract and the failure to make the payments thereunder after the 1938 decree was held to be invalid by the Supreme Court, make it

apparent that resort to the courts would have proved unavailing or that a judgment would have been unenforceable.

Upon careful consideration of the record, we conclude that the claim is meritorious and that the claimant is entitled to an award equal to the losses suffered by it. We compute such losses as follows:

Principal	<i>Pesos</i> 1,800,000.00
Total interest, 11 yrs., 4 mos., 8 days.....	1,226,400
Less interest on partial payments.....	190,493
	1,035,907.00
Total to October 5, 1937.....	2,835,907.00
Less payments made	514,453.13
	2,321,453.87

Converted at the rate of exchange (3.55) applicable on October 5, 1937, said sum amounts to \$653,930.66.

The Commission accordingly awards to claimant the sum of \$653,930.66 with interest from October 5, 1937, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 111-E

AMC Docket No. 43. Claimant: John Merrill. Amount claimed: \$4,154.34. Amount awarded: \$2,500.00.

This claim in the amount of \$4,154.34 is based upon the alleged failure of the Mexican Government to provide protection for the personal property of the claimant. The American nationality of the claimant and his ownership of the property involved in this claim are established.

The proof is that claimant leased mines and buildings at the mining camp of El Palmar, located near the village of San Nicolas, State of Tamaulipas, Mexico in 1910 and that he operated the mines until 1913 when they were closed as a result of revolutionary disturbances. In 1917 claimant bought additional machinery and equipment and resumed operation of the mines. He discontinued such operation in 1925 and stored a portion of his machinery and equipment in the buildings at El Palmar owned by the Tamaulipas Mining Company, his lessor.

On June 19, 1937, the residents of El Palmar filed a petition for the dotation of ejidos. This petition asked for the property belonging to the Tamaulipas Mining Company, including the property surrounding the sheds or building in which the claimant's personal property was stored. This petition was signed by one Roman Castellanos as representative of the agrarian petitioners. It appears from evidence furnished by the municipal authorities of San Nicolas to the American Consul that said Roman Castellanos was Commissary for the agrarian community of El Palmar after 1936 and that he was mayor of the town of San Nicolas in the year 1938. On or about August, 1937, the claimant wanted to dispose of some of his personal property stored in the buildings at El Palmar but his Mexican agent was refused access to the buildings by said Roman Castellanos and was not allowed to take the property. Claimant wrote a letter to the Governor of the State of Tamaulipas dated March 19, 1938, requesting protection for his property. He stated therein

that he had been refused access to the property by Roman Castellanos and asked the assistance of the Governor in obtaining possession thereof. No reply or other response to this letter was received. At the time this letter was written Roman Castellanos was mayor of the town of San Nicolas, as aforesaid.

It is the view of this Commission that the foregoing facts fully establish the international responsibility of the Mexican Government for the damages sustained by claimant. The applicable principle of international law is well stated in article 7 of the draft convention of The Law of Responsibility of States for Damage Done in Their Territory to the Person or Property of Foreigners, prepared by the Research in International Law, Harvard Law School. Therein it is said that:

"A state is responsible, if any injury to an alien results from the wrongful act or omission of one of its subordinate officers or employees within the scope of his office or function, if justice is denied to the injured alien, or if, without having given adequate redress to the injured alien, the state has failed to discipline the officer or employee."

The same principle is set forth in the case of *DeBrissot* (United States v. Venezuela). The liability of a government for improper acts of its officials was held therein to be established when it is shown that such government

"... having been advised of the facts, ... has not pressed itself to blame the acts of its agent, nor to take the proper measures to prevent in future the repetition of the same faults. December 5, 1885. Moore's Arb. 2949, 2453."

As to the question of damages, we have considered the character and age of the property involved, the fact that it was in storage for a long period of time, and that part of it had never been put to any use, and find that the fair value thereof is \$2,500.00.

The Commission, accordingly, awards to claimant the principal sum of \$2,500.00, without interest.

DECISION No. 18-E

AMC Docket No. 44. Claimant: Sidney Austin Witherbee. Amount claimed: Not stated. Award: disallowed.

This claim for an unstated amount is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

An affidavit was filed with this Commission on November 30, 1943, from which it appears that it is the contention of claimant that in 1912 he became sole owner of all the Mexican properties and franchises of the Kansas City, Mexico and Orient Railway Company and that he was divested of such ownership by some action on the part of the Government of Mexico which occurred in 1940, the exact nature of which is to him unknown.

Claimant has submitted no evidence of ownership of said railway, or any property, franchises or rights connected therewith, or of the confiscation or expropriation by the Government of Mexico of any of said property or rights.

The record discloses no valid basis for an award and the claim is, therefore, disallowed.

DECISION No. 125-E

AMC Docket No. 45. Claimant: General Finance Corporation. Amount claimed: \$1,295,650.54. Amount awarded: \$210,000.00.

The claimant herein, the General Finance Corporation, has asked an award in the amount of \$1,295,650.54 which sum, it is alleged, represents the investment, plus interest thereon, of claimant's predecessor in interest, the Utility and Industrial Corporation, in securities of "Hidros, S.A.," a Mexican corporation (hereinafter referred to as Hidros). The claim is predicated upon damages alleged to have resulted from the cancellation by the Municipalities of Tampico and Ciudad Madero of concessions held by said Hidros for the operation of a water system for the two cities and the seizure of the physical properties of said Mexican corporation.

The claimant is an American corporation and its American nationality is established as is that of its predecessor in interest, the said Utility and Industrial Corporation, which was merged with the claimant corporation. Said Utility and Industrial Corporation purchased on March 5, 1929, 127 shares of common stock of Hidros with a par value of 127,000 pesos, for which it paid 1,323,263.05 pesos (\$633,412.50) and bonds of Hidros with a par value of 700,000 pesos for which it paid 729,357.04 pesos (\$349,125.00) thus acquiring 50.8% of the common stock and 28% of the bonds of said Hidros.

The history of said water system as it affects this claim may be stated briefly. Prior to September 27, 1926, the City of Tampico operated its own water system. It is alleged that this was inadequate to meet the needs of the city, the population of which had greatly expanded by reason of the oil industry. At that time the City of Madero had no water system. On or about such date, the City of Tampico entered into a contract with a Mexican corporation, Structor, S.A., (hereinafter called Structor) for the construction and operation of a water system for a period of 30 years, the plant thereafter to revert to the city. The contract provided that Structor should take over the existing plant and operate it and extend or replace such plant where necessary. It further provided that Structor should make certain payments to the city during the operation. The contract was accepted by Structor and by the city, and it was ratified by the State Congress of Tamaulipas. At this time there was in existence a contract between the City of Tampico and the Federal Government, by the terms of which the latter was to receive one-fourth of the water produced by the Tampico system. Subsequent to the ratification of the contract between Structor and the City of Tampico the Federal Government released its claim to this water. It is alleged that this was a tacit ratification of the concession contract by the Federal Government.

On June 9, 1927, Structor and Hidros entered into an agreement whereby Structor transferred and assigned to Hidros the concession above mentioned. Structor, however, obligated itself to build the water system and in return for the assignment received 200,000 pesos in cash and 2,500,000 pesos in bonds to pay for the construction. Said bonds represented the total bond

issue of Hidros and they were secured by a mortgage on all the property of the company. The assignment was approved by the State of Tamaulipas on June 23, 1927.

On January 31, 1929, Villa CeCelia (now Ciudad Madero) entered into a similar contract for water with Hidros. This village was a suburb of Tampico, and the water system was merely an extension of the Tampico plant.

In the meantime the construction of the new plant was being carried out and there is indication that most of the system was constructed during 1928. The work was completed in 1929 and the extension of the system for Madero was built in the same year.

During the operation of the old and new plant by the company, increasing resentment of water users culminated in three amparo suits by certain water users against the Municipalities and the company. It was alleged that the rates were unreasonably high and that a number of provisions in the concession were an improper delegation of sovereign authority. The company and the Municipal officials defended the legality of the concession. The Mexican Supreme Court decided these cases in favor of the defendants, but it does not appear that the Court considered the cases on their merits. As a result, however, the entire question of the concession was submitted to arbitration. President Rubio of Mexico was named arbitrator. He filed his report on March 17, 1931, and made certain recommendations as to modification of the terms of the concession. Following said report, amended concession contracts were entered into by the company and the two Municipalities. It is the contention of claimant that if certain provisions of the original franchise were objectionable on the ground that they were illegal, the new contract removed such objections. In any event, it is apparent that the water users were not placated by the change.

On April 27, 1932, the City Councils of both Tampico and Madero declared that the concessions were illegal and void and ordered the police to seize the entire water system and equipment. This was done. Hidros has never regained the property and has never obtained compensation therefor.

Hidros filed several amparo suits to secure possession of specific properties but was not successful therein. The Mexican Courts held that the concession contracts attempted to delegate certain sovereign authority and were therefore void. In none of the suits was there any specific denial of the right of the company to obtain compensation.

Claimant contends that the concession contracts, at least in their amended form, were valid. The Supreme Court of Mexico determined that question to the contrary. Claimant maintains that said determination constitutes a denial of justice and, accordingly, makes claim (1) for value of the concession and (2) amount invested in construction, etc. Claimant has failed to establish by competent evidence that it suffered any damages resulting from the cancellation of the concession contracts, hence we deem it unnecessary to pass upon the merits of the attack on the aforesaid decision of the Supreme Court. The evidence does,

however, establish that a large investment was made in reliance upon the validity of such contracts. We hold that the Government of Mexico, under International Law, must reimburse claimant to the extent that it has been unjustly enriched. The amount of such unjust enrichment is the value of the properties taken, at the time of their taking. Weighing all the evidence in the record and considering all the factors having a bearing on the value of the properties in question, the Commission finds such value to be \$750,000.00 as of April 27, 1932, the date when said properties were seized.

The face value of the mortgage bonds on the property on the date of the seizure was 2,500,000 pesos. Converted into United States currency at the then existing rate of exchange, this sum amounted to \$833,333.33. The value of the loss sustained by Hidros is thus shown to be less than the amount of the outstanding mortgage bonds. Claimant, holding 28% of said outstanding bonds, is, as a consequence, entitled to that percentage of the loss sustained by Hidros. This amounts to \$210,000.00.

Claimant also owned 50.8% of the common stock. It contends that the common stock had a definite value based on prospective earnings which must be considered regardless of the prior lien of such mortgage bonds. We find no merit to said contention and hold that claimant is entitled to no award based upon its ownership of said common stock.

The claimant herein, General Finance Corporation, is, accordingly, awarded the principal sum of \$210,000.00, with interest thereon from April 27, 1932, pursuant to the provisions of section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 24-E

AMC Docket No. 47. Claimant: Edmund L. Buckley. Amount claimed: \$150,320.00. Award: disallowed.

This is an agrarian claim in the amount of \$150,320.00. It is based upon the alleged expropriation of 7,688 hectares of land situated in the Municipalities of Axtla and Huichuetlan, State of San Luis Potosi, Mexico, under thirteen Presidential Decrees issued during the years 1932-1939.

Except for the record of the baptism of the claimant, no evidence of any sort in support of the claim has been presented. Thus there is no evidence of ownership of the property by the claimant or of any expropriation thereof by the Government of Mexico, or of any wrongful act by said Government with respect to the property of the claimant.

The claim is, therefore, disallowed.

DECISION No. 84-E

AMC Docket No. 48. Claimant: Rock Island Tropical Plantation Company. Amount claimed: \$35,000.00. Amount awarded: \$3,243.43.

This claim in the amount of \$35,000.00 is based upon alleged losses resulting from the expropriation of a tract of 724.2 hectares of claimant's land, known as "El Recreo," situated in the Municipality of San Juan Guichicovi, ex-district of Juchitan, State of Oaxaca, Mexico, under three Presidential Decrees, two of which are dated June 12, 1940, and the third dated July 24, 1940, and

published in Diario Oficial on August 14 and September 19, 1940, respectively.

The claimant company was incorporated in Arizona on July 5, 1905. Its American nationality and ownership of the property expropriated are established.

The Presidential Decrees and the description of the property affected are as follows:

Date of decree	Date of publication	Hectares	Classification
June 12, 1940.....	Aug. 14, 1940.....	459	Monte.
June 12, 1940.....	Aug. 14, 1940.....	138	Temporal.
July 24, 1940.....	Sept. 19, 1940.....	137.2	Temporal.
		734.2	

The fiscal valuation of said tract was 16,809.50 pesos. The books of the corporation carry the property at approximately \$6.25 per hectare, but the evidence in the record does not satisfactorily support such valuation. Considering the evidence as to improvements made on the property and the fact that only a small portion of the land was cultivated, also all other evidence bearing on the question of value, the Commission is of the opinion that a fair and just compensation for the expropriated land would be 5 pesos for the monte land and 50 pesos for the temporal land. This results in the total sum of 16,055 pesos which converted at the rate of exchange (4.95×1), applicable on the respective dates of the said decrees of expropriation, is equivalent to the sum of \$3,243.43. Of the said total sum, \$1,857.57 applies to the land expropriated by the two Presidential Decrees of June 12, 1940, and \$1,385.86 applies to the land expropriated by the Presidential Decree of July 24, 1940.

Rock Island Tropical Plantation Company is awarded the principal sum of \$3,243.43, with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 21-E

AMC Docket No. 49. Claimant: Mexican Fibre Company. Amount claimed: \$100,000.00. Award: disallowed.

This is an agrarian claim in the amount of \$100,000.00. It is based upon the alleged expropriation of 1,152 hectares of land comprising a part of the hacienda El Carrizal, situated in the Municipality of Aldama, State of Tamaulipas, Mexico, under a Presidential decree dated March 13, 1940.

Although claimant has been called upon to do so, it has furnished no evidence whatsoever in support of the claim.

The claim is, therefore, disallowed.

DECISION No. 113-E

AMC Docket No. 50. Claimant: Tula Iron and Lumber Company. Amount claimed: \$2,000,000.00. Amount awarded: \$42,397.77.

This claim for the sum of \$2,000,000.00 is before the Commission pursuant to the provisions of Section 3(a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon seven Presidential Decrees of expropriation each of which took a portion

of "Hacienda de Ferreria de Tula" located in the Municipalities of Tapalpa, Chiquilistlan and Atemajac de Brizuela, State of Jalisco, Mexico. Title to said lands was held by Mexican Iron and Steel Company, S. A., a Mexican corporation of which claimant acquired all the stock on August 6, 1929. An allotment from said Mexican corporation to the claimant herein for the full amount of all losses and damages has been presented in proper form. Claimant is a corporation organized under the laws of Maine on July 12, 1913. Satisfactory proof of its American nationality and that of its officers and directors has been submitted.

The seven decrees of expropriation on which the claim is based may be described as follows:

Date of decree	Date of publication	Date of possession	Area in hectares
1. July 9, 1929.....	Not shown.....	Aug. 22, 1922.....	560
2. Jan. 10, 1929....	Feb. 25, 1930.....	Not shown.....	698
3. Sept. 17, 1935....	Dec. 4, 1935.....	Dec. 29, 1935.....	840
4. Aug. 18, 1937....	Dec. 2, 1940.....	Dec. 24, 1943.....	4,180
5. Nov. 10, 1937....	Aug. 2, 1944.....	May 1, 1939.....	300
6. Jan. 10, 1940....	Mar. 21, 1940.....	Nov. 17, 1944.....	836.83
7. June 29, 1942....	Aug. 21, 1942.....	Nov. 30, 1942.....	510

It is clear that claims for losses resulting from decrees numbered 1, 2, 3 and 7 are not within the jurisdiction of this Commission, its jurisdiction over agrarian claims not previously filed being limited to those arising between December 1, 1938 and October 6, 1940. Moreover, a claim for the loss of the 698 hectares described in decree numbered 2 was filed with the General Claims Commission. It was duly appraised by the American member of that Commission, the appraisal was accepted by claimant and an award based thereon was duly certified by this Commission to the Treasury Department.

This leaves for our consideration only items 4, 5 and 6.

As to the item 4, the officers of claimant state they had no knowledge, either actual or constructive, of the issuance of the Presidential Decree dated August 18, 1937, prior to its publication in *Diario Oficial* of December 2, 1940. There is nothing in the record to refute such statement. In the foregoing circumstances, we hold that the claim is within the jurisdiction of this Commission (Decision in claim of Lewis Lamm, Series 79-E). Congress, in the opinion of this Commission, did not intend to exclude the claim of an American national who had no actual or constructive knowledge of a decree of expropriation in time to have enabled him to file with a former Claims Commission a claim arising out of and based upon said decree of expropriation. The limitations of jurisdiction over agrarian claims contained in the Act of 1942 were designed to bar only those claimants who had an opportunity to file claims and who failed to do so.

With respect to item 5, it is established that claimant had no knowledge of the Presidential Decree of November 10, 1937, until May 1, 1939, when possession was granted to the agrarians. We accordingly hold that the claim arose on the date when such pos-

session was given and that this item of claim is also one within our jurisdiction.

Item 6 is clearly one for our consideration, the Presidential Decree having been issued and published on dates specifically indicated in the aforesaid Act, to be within our jurisdiction.

Upon the question of damages, very meager evidence as to the value of the lands expropriated has been submitted by claimant. It is shown in the records that the 300 hectares involved in item 5 were classified as pasture land and valued by the Mexican officials at 16 pesos per hectare. We find that such valuation is fair and reasonable for all pasture land involved in said item as well as in items 4 and 6. As to the tillable lands involved in the other items of claim, we find after consideration of such evidence of value as has been submitted herein, as well as evidence in other claims involving similar land, that 50 pesos per hectare constitutes fair and reasonable compensation therefor.

The decrees of expropriation in items 4, 5 and 6 classified the lands affected thereby as follows:

Date of decree	Tillable land (hectares)	Pasture land (hectares)	Total
Aug. 18, 1937.....	1,728	2,452	4,180
Nov. 10, 1937.....	.....	300	300
Jan. 10, 1940.....	429.69	407.14	836.83

Applying the values above indicated we compute claimant's losses as follows:

Item 4

August 18, 1937:	
1,728 hec. tillable at 50 pesos	86,400
2,452 hec. pasture at 16 pesos.....	39,232
Total	125,632

The prevailing rate of exchange on the date of the decree was 3.55 x 1. The above amount was equivalent to \$35,389.30. On this amount no interest is allowable since definitive possession was not given until December 24, 1943.

Item 5

November 10, 1937: 300 hec. pasture at 16 pesos.....	4,800
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On said date the rate of exchange was 3.55 x 1, and the above amount was equivalent to \$1,352.11. On this, claimant is entitled to interest from May 1, 1939, the date of definitive possession.

Item 6

January 10, 1940:	
429.69 hec. seasonal at 50 pesos.....	21,484
407.14 hec. pasture at 16 pesos.....	6,514
Total	27,998

This sum converted at the rate of exchange on said date (4.95 x 1) was equivalent to \$5,656.36. On this, no interest should be allowed since possession was not given until November 17, 1944.

Claimant contends that the value of all its remaining lands was destroyed by the various expropriations, but the proof adduced is insufficient to warrant any award for severance damage.

The awardable losses arising out of the various expropriations above noted are as follows:

August 18, 1937.....	\$35,389.30
November 10, 1937.....	1,352.11
January 10, 1940.....	5,656.36

Total\$42,397.77

The Commission accordingly awards to claimant, the Tula Iron and Lumber Company, the principal sum of \$42,397.77, with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, on \$1,352.11 from May 1, 1939.

DECISION No. 117-E

AMC Docket No. 51. Claimant: Nell Hilliard, Individually and as Administratrix of Estate of Curt Hilliard, deceased. Amount claimed: \$20,250.00. Amount awarded: \$13,500.00.

This claim in the amount of \$20,250.00 is before the Commission pursuant to the provisions of section 3 (a) (4) and is predicated upon the failure of the Governor of the State of Durango, Mexico, to render the claimant the protection to her property to which she was entitled under the laws of Mexico and under international law.

Curt Hilliard, now deceased, and Mrs. Nell Hilliard, wife of P. C. Hilliard, were American citizens at all times pertinent to this claim. They were engaged in the business of raising graded Hereford cattle in the State of New Mexico. In the year 1924 a drought occurred in said State and as a result thereof they moved their herd to the State of Chihuahua, Mexico, where feed was more abundant. These cattle were in charge of said Curt Hilliard. In the summer of 1925 he went back to New Mexico and remained there for some two weeks, leaving the cattle in the meantime in charge of Mexican cowboys. Upon his return he found that 375 head of said cattle had been stolen and driven away. All efforts to locate the stolen cattle at that time were unsuccessful.

In March of 1927 Curt Hilliard who was then working in El Paso was informed that a large number of cattle bearing the Hilliard brands were then located on a certain ranch in North-eastern Durango. Curt Hilliard and P. C. Hilliard went immediately to Durango City where they first sought the aid of General Eulogia Ortiz, the military commander of the State, and asked for a permit to gather and return their cattle to Chihuahua. Instead of granting such permit, General Ortiz had the Hilliards placed in jail on the apparent charge that they were connected with revolutionary activities. They were released the following day through the intervention of the American Consul, but were unable thereafter to obtain another interview with the General although they remained in Durango six weeks. As soon as the Hilliards were released from jail they began soliciting the protection of Governor Nejara and his assistance in recovering the stolen cattle. At the end of six weeks when the Governor finally granted permission the Hilliards took a civil officer and some cowboys to the ranch where the cattle had been located. There they found that during said six weeks the cattle had all been removed. Inquiry developed that some of the animals had been taken to

Minas del Oros where they had been slaughtered and that others had been shipped southward toward Mexico City. None of the cattle were recovered.

That the cattle of claimants were on the ranch which the Hilliards were seeking permission to visit and inspect, and that they were removed therefrom during the six weeks in which such permission was denied is amply established by the testimony of the witnesses Stoughton, Martin and West.

The evidence justifies the conclusion that the aforesaid action of the Governor of Durango renders the Mexican Government liable to claimant under international law for the losses sustained.

The claim is formulated as follows:

For 600 head of stock cattle at \$30 per head.....	\$18,000.00
For 15 registered Hereford Bulls at \$150.....	2,250.00
	20,250.00

It is contended that the 375 head which had been stolen from the range in Chihuahua in 1925 were augmented by natural increase prior to March 1927, to a total of 600. We do not find evidence in the record to justify this conclusion and must accordingly limit claimant's losses to the 375 head of cattle and the 15 registered bulls. There is evidence that the stock cattle were worth \$30 per head and that the registered bulls had a value of \$150 each.

An award is accordingly made to Nell Hilliard, individually and as Administratrix of the Estate of Curt Hilliard, deceased, for the sum of \$13,500 together with interest from June 1, 1927, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 63-E

AMC Docket No. 52. Claimant: Jesse J. Simpson, individually, and as administrator of the estate of James Reagan, deceased. Amount claimed: \$45,475.00. Amount awarded: \$20,000.00.

This claim in the amount of \$45,475.00 is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon loss of livestock and other personal property in the course of the so-called "Escobar" revolution during the spring of 1929.

The "Escobar" revolution was begun on March 3, 1929, under the Plan of Hermisillo (Foreign Relations of the United States, (1929) 339-340). A brief account of the revolution is given by Wade (New International Year Book (1930) 505) as follows:

"Gen. Jesus Maria Aguirre, military commander of the State of Vera Cruz, on March 3 proclaimed a military revolution which received the support of Gen. Fausto Topete of the State of Sonora, Gen. Francisco Manzo, military commander of Sonora, and Gen. Gonzalo Escobar, military commander of the State of Coahuila. The revolutionists made a bid for the support of the Church by a promise of noninterference in religious affairs but made it plain that their chief aim was the overthrow of the Portes Gil administration, which had the powerful support of former President Plutarco Elias Calles, and to prevent the election of Pascual Ortiz Rubio, who, with the support of Calles, was a candidate for Presi-

dent. The insurrection made considerable headway in northern Mexico and General Calles was appointed Secretary of War to direct the Government's campaign. The United States Government gave moral and material support to the Mexican Government by continuing in force the embargo on the export of arms and munitions to parties in Mexico other than the Government and by adding civil airplanes to the embargo list. Personally taking the field early in April, General Calles defeated the rebels after a remarkable series of strategic maneuvers and announced to President Portes Gil on April 28 that the revolt was ended. Gen. Jesus Aguirre, Gen. Simon Aguirre, and a number of officers of their staffs were captured and executed. Other leading rebels escaped to the United States."

For a more detailed description of the tactical warfare involved in this uprising, see Nathaniel and Sylvia Weyl (*The Re-Conquest of Mexico* (1929) 86-94).

Although the Escobar movement considered itself a "legal revolutionary" one and not merely a military mutiny, it was the definite position of the United States that it would not recognize the belligerency of the insurgents and that it would only furnish aid in the form of sales of arms and munitions to the then constituted Government of Mexico, Ugarte, (Representative of Escobar—Secretary of State (March 30, 1929), (*Foreign Relations, ibid.*, 375).)

In a telegram to the Consul at Nogales of April 25, 1929, the then Secretary of State said:

"This Government has recognized only that there is an armed uprising against the regularly constituted Government of Mexico which has adopted measures of suppression which seem now about to be successful. The rebels, therefore, have no international legal status and it would seem that nationally they stand as illegal groups of armed men attempting to overthrow their own Government, and therefore probably having the status of traitors. They are from the standpoint of legal principle, both international and national, in no better position than ordinary outlaws and bandits." (*Foreign Relations, ibid.* (402-403))

It is an established principle of international law that the regularly constituted government of a country is not liable for the actions of unsuccessful revolutionists unless there is a showing that such government was not diligent in its efforts to suppress the revolution.

G. I. Solis (*United States v. Mexico*) (1929) 48, 51-56.

V Hackworth's, *Digest of International Law*, (1943) 666-681.

II Hyde, *International Law*, (1945) 980-984.

II Whiteman, *Damages in International Law*, (1937) 35, 1418.

There has been no showing in this case that the Government of Mexico was in any way negligent or failed to assert all the efforts within its capacity to suppress the "Escobar" revolution. This Commission therefore holds that the Government of Mexico is not

liable for the acts of rebel forces during the course of the "Escobar" revolution.

It is also an established principal of international law that a government is responsible for the acts of its own forces, even if they are engaged in suppressing a revolution.

V Hackworth's *Digest of International Law* (1943) 687-692

II Hyde's *International Law* (1945) 965-968

It is necessary, therefore, only to apply these established principles to the facts of the present case. The nationality of the claimants is established. The claimant, Jesse J. Simpson and James Reagan, whose estate is a claimant herein, jointly operated a cattle ranch near the town of Casas Grande in the State of Chihuahua. Their ownership of cattle, horses and personal property on this ranch is established. The evidence in the record shows that both the rebel and federal forces crossed this ranch during the course of the "Escobar" revolution described above. These forces killed livestock and horses and carried away personal property belonging to the claimants. The items of claim for these losses are formulated as follows:

1,300 steers at \$30 per head.....	\$39,000.00
15 cows and calves at \$40.....	600.00
60 saddle horses at \$50.....	3,000.00
8 mules driven away \$50.....	400.00
1 mule killed \$50.....	50.00
1 automobile redeemed.....	300.00
5½ miles wire fence at \$1.50 (sic).....	825.00
Destruction of tank and windmill.....	500.00
Cowboy saddles.....	300.00
3 pack saddles, 1 tent, cooking vessels, dishes, sheets and blankets, destruction to ranch house and corrals.....	500.00
	45,475.00

The evidence as to the amount of damage inflicted by the federal and rebel forces respectively is conflicting and lacks definiteness. The difficulty of precise proof as to the allocation of the loss attributable, respectively, to acts of unsuccessful revolutionists and to those of federal troops is, however, recognized by the Commission. As above stated, the Government of Mexico is liable only for the damage committed by the federal forces. Upon a consideration of the record the Commission is of the opinion that a fair estimate of the losses caused by the federal forces is \$20,000.00.

Accordingly, an award is made to the claimants in the amount of \$20,000.00, payable \$10,000.00 to Jesse J. Simpson individually and \$10,000.00 to the Estate of James Reagan, deceased, with interest from June 1, 1929.

DECISION No. 33-E

AMC Docket No. 53. Claimant: John D. Fletcher. Amount claimed: \$16,408.61. Award: disallowed.

This is an agrarian claim, in the amount of \$16,408.61, based upon the expropriation of 543 hectares of land comprehending a portion of a ranch designated "La Concha" situated in the State of Chihuahua, Mexico, under a Presidential Decree dated June 30, 1937, and published July 21, 1937. This claim was not filed with any previous commission.

Agrarian claims not previously filed, over which this Commission has jurisdiction, are described in paragraphs (1), (2) and (3) of section 3 (a) of the Settlement of Mexican Claims Act of 1942. Since it is clear that a claim of this character based upon a Presidential Decree of expropriation issued and published on the aforesaid dates does not come within any of the categories of agrarian claims enumerated in said paragraphs, it follows that the Commission is without jurisdiction to pass upon the merits of the present claim.

It is accordingly ordered that this claim be disallowed for want of jurisdiction.

DECISION No. 77-E

AMC Docket No. 54. Claimant: Estate of Moses M. Sanders and Martin F. Sanders. Amount claimed: \$41,900.00. Award: disallowed.

Claim is made in this case for the loss of use of claimants' property consisting of 730.59 acres (259 hectares) of land, located near the town of Colonia Diaz in the northern part of Chihuahua, Mexico, from January 1, 1927 to October 6, 1940, by reason of the alleged failure of the Mexican Government to provide protection against squatters. It is claimed that such squatters have occupied 122 hectares of said land, during the aforesaid period.

Claimants are American nationals and the owners of the land herein involved.

Moses M. Sanders, the father of Martin F. Sanders, was one of several Mormons who settled in Colonia Diaz in or about 1890. They were driven from this colony about 1912, during the revolutionary disturbances in Mexico. A claim was filed with the Special Mexican Claims Commission for the losses caused by the revolutionists, and an award was made therein for loss of use for half of the eight-year period, to-wit, from 1912 to 1920, the holding of that Commission being that during half of the eight-year period, claimants had not been deprived of the use of their property through any action for which Mexico was liable, under the Convention of September 10, 1923.

The unsupported allegations in the present claim are to the effect that this property has been occupied by agrarian squatters, chiefly rebel soldiers from the various revolutionary movements, and that they have not been removed from this property. Claimants have not at any time between 1912 and the present time instituted any proceedings in the Mexican courts to evict these squatters, nor is there satisfactory evidence that they made any representation to the Mexican Government against the acts of the squatters. Martin F. Sanders, claimant, states that some years ago he talked with Governor Quevedo of the State of Chihuahua, regarding the removal of these agrarians from the said property and that the Governor told him it was a matter for legal procedure. Such casual conversation is not considered sufficient to require action by the Government.

Upon the entire record it is the opinion of this Commission that claimants have not established Mexican liability.

Accordingly, the claim must be disallowed.

DECISION No. 100-E

AMC Docket No. 58. Claimant: Resources Corporation International.
Amount claimed: \$1,353,455.38. Award: disallowed.

This is a claim under section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon ten Presidential expropriation decrees affecting ten separate tracts of land, having a total area of 27,899 hectares. These tracts were part of the "Hacienda de Lajas", also known as "San Francisco Javier de las Lajas" comprising 67,778 hectares, situated in the Municipality of San Juan del Rio, State of Durango, Mexico. It is alleged that the ten expropriated areas included all the water courses and dams for irrigation and that as a consequence the remaining portion was rendered valueless. Claim is therefore made for the alleged original cost of the entire hacienda, to wit, \$753,655.50, with interest compounded annually at 5 percent from October 15, 1931, to October 15, 1943, the date on which the claimant allegedly acquired said property.

Claimant is a Delaware corporation, organized in Chicago, Illinois, on October 15, 1931, for the ostensible purpose of taking and holding title to some 2,000,000 acres of land in Mexico, including the above-mentioned hacienda, which one H. S. Hoover claimed to have acquired in various Mexican States on behalf of an unincorporated syndicate which had been previously promoted by said Hoover. The affidavit of claim executed by one Arnold Joerns, Vice President of the claimant corporation, alleges that on or about October 15, 1931, the within claimant purchased from said H. S. Hoover, 980 shares of the total of 1000 registered shares of Sociedad Mexicana Explotadora de Bienes Raices, S. C., a Mexican corporation which had been organized on or about September 6, 1930, by one Fernando Puga and others, and at which time, said 1000 shares of stock were distributed as follows:

	Shares
Fernando Puga	855
Bruce L. Hoover	75
Edwardo Hartman	65
Edmundo O'Gorman	5

In the instrument creating the corporation the said Puga, in consideration of the shares allotted to him, conveyed the entire property involved in this claim to said corporation.

Certificates for 980 shares of said Mexican corporation have been submitted bearing endorsements of Fernando Puga on 850 shares, those of Edwardo Hartman on 60 shares and of Bruce L. Hoover on 70 shares. Said endorsements are not to the claimant here but to *Negociadora de Valores, S.A.* These are the only endorsements shown and they are dated August 10, 1933, almost two years after the date on which it is alleged they were acquired by claimant from H. S. Hoover. There is no evidence that H. S. Hoover was ever the legal owner of said shares or that he ever had any legal right to transfer them to claimant herein.

In the absence of any evidence that claimant is or ever was the owner of the stock of the Mexican corporation which owned the expropriated land, this claim must be and hereby is disallowed.

DECISION No. 62-E

AMC Docket No. 59. Claimant: Mexican Land & Trustee Co. Amount claimed: \$16,350.00. Award: disallowed.

This is an agrarian claim based upon the alleged expropriation of 327 hectares of land located in the States of Tamaulipas.

The evidence submitted is not sufficient to establish the nationality of the claimant, its ownership of property, or the expropriation of such property at a time within our jurisdiction.

From records in the files of the Department of State it appears that land described as the property of the claimant was expropriated by a decree of the Governor of the State of Tamaulipas, dated June 29, 1940. According to information furnished by the American Consul in Tamaulipas, provisional possession of the expropriated area was not given until March 23, 1941. The Consul also stated that according to information furnished him by the Agrarian Department of Mexico actual possession of the land by agrarians had not taken place as late as March 16, 1943. The Governor's Decree was apparently confirmed by a Presidential Decree dated July 1, 1942.

It has been held by this Commission that in the absence of a Presidential Decree made on a date within our jurisdiction a Governor's Decree would give rise to a claim provided that provisional possession was given thereunder at any time within the jurisdiction of this Commission. In this claim both provisional possession and the Presidential Decree are outside the period of its jurisdiction. In accordance with the principle set forth in *Ferdinand P. Armbruster* (Series E, Decision No. 34), this claim must be disallowed for want of jurisdiction.

DECISION No. 34-E

AMC Docket No. 61. Claimant: Ferdinand P. Armbruster. Amount claimed: Not stated. Award: disallowed.

This is an agrarian claim based upon the expropriation of 360.5 hectares of land, being a part of a tract called San Pablo, situated in the State of Veracruz, Mexico. This land was expropriated under a Governor's Decree dated August 13, 1940, which does not appear to have been published but which was, however, confirmed by a Presidential Decree dated November 6, 1940 and published December 6, 1940. In a letter dated February 6, 1941, the American Consul in Veracruz reported to the Department of State that, as late as January 31, 1941, according to information furnished the Consulate by Mexican agrarian authorities, provisional possession of the above property had not yet been given.

Under section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942, this Commission has jurisdiction over "agrarian claims, which arose between December 1, 1938 and October 6, 1940, inclusive . . ." In the instant claim, the Presidential Decree, as hereinbefore indicated, was not made until November 6, 1940, a date beyond our jurisdiction. We have heretofore held that in the absence of a Presidential Decree made on a date within our jurisdiction, a Governor's Decree would give rise to a claim, provided that provisional possession was given thereunder at any time within our jurisdiction. Herein, although the Governor's Decree was made August 13, 1940, a date within our jurisdiction,

there is no showing that provisional possession had been granted at any time before October 6, 1940, the limit of our jurisdiction.

The claim is, therefore, disallowed for want of jurisdiction.

DECISION No. 31-E

AMC Docket No. 62. Claimant: Garnet E. Harper. Amount claimed: Not stated. Award: disallowed.

This is an agrarian claim in an unstated amount. It is based upon the alleged expropriation of portions of a tract known as Demasias de Santa Teresa, situated about 25 miles southwest of the city of Hermosillo, State of Sonora, under a Presidential Decree dated May 29, 1930, and published June 30, 1930, declaring the title to said property to be null and void. The conveyance of the property to claimant was on October 28, 1936. The claimant was, therefore, not owner of the property at the time of the issuance and publication of the decree of nullification in 1930 upon which the claim is based. The deed cannot be treated as an assignment of the claim. (*Compania Agricola la Esmeralda*, Decision No. 50, Series D.)

The claim is, therefore, disallowed.

DECISION No. 94-E

AMC Docket No. 63. Claimant: Emilie Tutschulte Daugherty as an individual and on behalf of Albert F. Andrade, Naomi S. Heffernan as an individual, and as Executrix of the Estate of William T. Heffernan, and Woodson E. Norvell. Amount claimed: \$3,111,296.00. Amount awarded: \$602,188.34.

Claimants herein ask indemnity in the sum of \$3,111,296.00 for losses allegedly sustained as a result of a denial of justice for which the Mexican Government is claimed to be responsible under International Law. Said sum is comprised of \$801,296.00, alleged to be the value of 179:47:79 hectares of which claimants state they were deprived, and \$2,310,000.00 claimed to be the reasonable ground rent of such property between July 6, 1921, and October 6, 1940. The land in question had been subdivided into blocks and lots by claimants' predecessors in interest, and forms a portion of the town of Mexicali, Baja California, Mexico, now the capital of said territory.

The title to the property at the time of the expropriation causing the losses involved in this claim rested in the name of the *Compania Regularizadora de Titulos de Mexicali, S.A.*, a corporation organized under the laws of Mexico. Claimants contend that they are the actual and beneficial owners of all the capital stock of this company. They assert that one of the claimants, Emilie Tutschulte Daugherty, having an allotment from the company of all its stock, assigned her interest therein to herself and to the other claimants. The evidence, however, clearly shows that only 80 per cent of the capital stock of the corporation is registered in her name, the other 20 per cent being registered in equal parts in the names of four Mexican citizens. Claimants contend that the transfer of such stock to the Mexicans was in consideration of their services in securing a settlement of this claim against Mexico, and that inasmuch as such claim was not settled, the consideration failed. The evidence submitted, however, does not warrant this Commission in setting aside the said transfer of stock

to the Mexicans, hence claimants are entitled to no more than 80 per cent of any amount determined to be the loss sustained by the corporation.

It appears that claimant, Mrs. Daugherty, received her stock by virtue of an order of the Probate Court, distributing the proceeds of the estate of her late husband, Alvin A. Daugherty. Mrs. Daugherty has transferred and assigned her interest as follows:

10 percent to Emilie Tutschulte Daugherty.

20 percent to Albert F. Andrade.

20 percent to Naomi S. Heffernan as sole remaining distributive heir and Executrix of the Estate of William T. Heffernan, deceased.

50 percent to Woodson E. Norvell.

Satisfactory evidence has been submitted establishing that the claimants and their predecessors in interest have had American nationality at all times pertinent to this claim.

The record indicates that on July 6, 1921, the National Congress of Mexico passed a statute expropriating the townsite of Mexicali, including the land involved herein. The said act directed the President to give effect to said expropriation by proclamation and to indemnify the owners of the property as provided by law. The decree of the President was issued in January, 1922. Thereafter the authorities and the property owners having failed to agree on values, the Mexican authorities instituted a condemnation proceeding, as provided by law, to determine such values.

The provisions of the Mexican law in such cases (Chap. 4, Arts. 549-656 incl. *Mexican Code of Civil Procedure* (1922)) provides that the owner of the property and the Mexican authorities shall each nominate an appraiser, and that such nominees shall be appointed by the Court to report on the value of the property. If their appraisals agree as to such value, the amount agreed upon shall be entered as a judgment. If their appraisals vary in amount not more than 10 percent, then the average of such amounts shall be the sum of the award. If the said appraisals vary more than 10 percent, the Court shall then appoint a third appraiser who shall fix a value without considering the previous reports. If her findings as to the amount coincide with the findings of either of the other two, then the amount of such joint finding shall be the amount of the judgment to be entered. If the amount of such third appraisal shall be within 10 percent of the amount fixed by either of the other two appraisals, then an amount equal to the average of such third appraisal and the appraisal within 10 per cent variation thereof shall be entered as a judgment.

In this instance the appraiser nominated by the Mexican authorities fixed a valuation of 186,454.82 pesos. The appraiser nominated by the corporation fixed a value of 1,595,150.00 pesos. The variation in these valuations being greater than 10 per cent, the Court appointed a third appraiser. He fixed the value at 1,505,545.00 pesos in a report dated April 9, 1923, after deducting the amount of 9,600 pesos representing an item which the Commission finds has not been satisfactorily shown to have belonged to the corporation. Thus the amount of the value of the property fixed by the third appraiser was within 10 per cent of

the value of said property as fixed by one of the two original appraisers. The average of such two appraisals within 10 per cent variation was 1,550,847.50 pesos and, as above outlined, the law provided that a judgment should be entered in said amount. The law further provided that such judgment should not be subject to appeal. Although the judgment could have been entered by the Court at any time after the date of filing of the report of the third appraiser, April 9, 1923, and should have been so entered under the law, this was never done.

The evidence further shows that the Mexican authorities, in the meantime, endeavored to negotiate a settlement with the corporation by the terms of which the entry of the judgment would be eliminated. It was claimed by such authorities, as a reason for their action, that funds were not available to pay the judgment immediately as the law required. Claimants, relying on the integrity of the Mexican courts, did not file a claim with the General Claims Commission as they might have done. No claim could have been filed with the Agrarian Claims Commission, as the expropriation did not take place under the Agrarian laws.

On March 4, 1932, the Mexican authorities dismissed the appraisal suit. Claimants acquiesced therein in consideration of a promise by the Mexican officials that an agreement would thereafter be entered into regarding payment for the property. The record discloses that negotiations as to such payment continued for several years after the dismissal of the suit, but did not materialize into any payments to claimants.

That the claimants have lost the real estate in question is clearly established by the record. There is likewise no question that claimants have not been compensated therefor. It is the contention of claimants that the failure of the Court to enter the judgment as required by law constitutes a denial of justice for which the Mexican Government is responsible. Such contention seems to the Commission to be amply sustained by the proof. Claimants had a right to rely on the integrity of the Mexican Federal Court and to expect of the Judge of the Court that he would perform the duty required of him by law. It is clear that a failure to act may have the same effect as a direct refusal to act. The dismissal of the suit was a direct act which constituted a denial of justice. Such action having occurred on March 4, 1932, the Commission holds that the claim arose on that date within the meaning of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

As to the losses sustained by claimants, it is established that the judgment required to be entered in the aforementioned appraisal suit under the Mexican law was for 1,550,847.50 pesos. Said sum in the opinion of the Commission represents the loss sustained by the owner of the property involved in such suit through the failure of the Court to enter said judgment in the suit as a result of the dismissal of said appraisal suit. Converted into dollars at the rate of exchange prevailing on March 4, 1932 (2.70×1), the amount is \$574,387.96.

Claimants have also asked an award for the loss of use of the property from July 6, 1921, to October 6, 1940. Although the

evidence establishes that claimants were deprived of the use of the land during that period, this Commission has no authority to grant compensation for losses which occurred prior to January 1, 1927. It holds, therefore, that claimants are entitled to be compensated for the loss of use of the property from January 1, 1927, until March 4, 1932.

Claimants have furnished some evidence in support of the claim for loss of use in the amount of \$10,000.00 per month, but the Commission finds such evidence to be unsatisfactory as a basis for an award. Under the circumstances it is held that an allowance based on interest on the principal sum would be a fair method of computing the compensation for the loss of use. The legal rate of interest in Mexico at that period was 6 per cent per annum. Computed at that rate on the principal sum of \$574,387.96 from January 1, 1927, to March 4, 1932, the interest amounts to \$178,347.46. This added to the amount of the judgment aforementioned makes a total of \$752,735.42. Claimants are entitled to 80 per cent of this amount, or \$602,188.34.

Claimants are, accordingly, awarded the principal sum of \$602,188.34 to be divided as follows:

To Emilie Tutschulte Daugherty	\$60,218.83
To Albert F. Andrade	120,437.67
To Naomi S. Heffernan, Executrix of the Estate of William T. Heffernan, deceased	120,437.67
To Woodson E. Norvell	301,094.17

all of said amounts to carry interest from March 4, 1932, according to the provisions of section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 16-E

AMC Docket No. 64. Claimant: C. A. Vance. Amount claimed: \$79,300.00. Award: disallowed.

This claim, in the amount of \$79,300, is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is alleged that in 1925 the partnership of Hotchkiss and Vance acquired the Hacienda de San Jose de Costilla in the State of Nayarit containing some 20,000 acres; that later in the same year there was expropriated 4,140 acres which formed the basis of a claim on behalf of said partnership before the General Claims Commission, Docket No. 3464; that in 1934 the remainder of the land, 15,860 acres, was taken under the Idle Land Law of the State of Nayarit, and that the operating partner, Vance, was forced to leave Mexico on July 24 of that year. The land is valued at \$5.00 per acre.

The nationality of the partners, W. J. Hotchkiss and C. A. Vance, was proved before the General Claims Commission, Docket No. 3464.

No evidence has been submitted to show expropriation of said 15,860 acres of land by the Government of Mexico nor is there any proof that said Government has taken any wrongful action with respect to this land.

The claim is therefore disallowed.

DECISION No. 12-E

AMC Docket No. 65. Claimant: Spencer W. Stewart. Amount claimed: \$107,771.29. Amount awarded: \$107,771.29.

This is a claim under section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942 in the amount of \$107,771.29 with interest, said to be the amount due the claimant under a contract between him and the Government of the Northern District of Lower California, Mexico, dated February 17, 1928, providing for the construction of a dam on the Tiajuana River in that District. The claimant is a citizen of the United States by birth. On January 12, 1944, the Ambursen Dam Company, an American national, assigned all of its interest in the present claim to the claimant.

In 1927 the claimant, who was then President of the Ambursen Dam Company, at the invitation of the then Governor of the Northern District of Lower California, General Abelardo L. Rodriguez, prepared the necessary engineering studies and the preliminary plans for the construction of a dam on the Tiajuana River. These plans were submitted to the Government of Mexico and approved by it. Accordingly, a contract for the construction of the dam was entered into between the Government of the Northern District of Lower California and the claimant, both in his individual capacity and as President of the Ambursen Dam Company. (The term claimant is used in this decision to refer to Mr. Spencer W. Stewart in both of these capacities.) This contract provided *inter alia* that the said Government would pay the costs of constructing the dam and a fee of 10 per cent of such costs to the claimant for services. This contract also provided that any difficulty or controversy concerning it should be submitted to arbitration. The claimant subsequently entered into a supplementary contract dated February 1, 1933, which ratified the earlier contract and under which the Mexican National Irrigation Commission assumed all the obligations of the Government of the Northern District of Lower California.

The site selected for the construction of the dam in fact proved unsuitable for the type of dam originally planned. A board of consulting engineers was appointed by the Government of Mexico and this Government, acting on the advice of the board, instructed the claimant to prepare new plans and specifications to meet the unexpected geological conditions which had been encountered. The claimant prepared such plans for a new and different type of dam. The design of this new type dam involved many novel features which have been described in detail in scientific and trade journals. It is the expenditures in the preparation of these new plans which are the subject of the present claim.

After the work of constructing the dam was completed the claimant requested payment of his expenses in connection with the preparation of the new plans above referred to in the amount of \$97,973.90, together with a fee of 10 per cent of the said amount. The President of Mexico appointed Manuel Rivas, a Mexican engineer of outstanding reputation, as an arbitrator to study and decide on the claim. The arbitrator examined the claim and found that the claimant was entitled to the sum of \$97,973.90 and, in addition, to a fee of 10 per cent thereof. He filed his report to this effect on June 5, 1934.

The claimant alleges that the President of Mexico informally agreed to pay the claimant the amount of \$97,973.90 provided

the claimant would waive the fee of 10 per cent thereof and all accumulated interest and that the claimant accepted this proposal. In any event, on October 21, 1934, the President of Mexico officially ordered that payment be made to the claimant in the amount of \$97,973.90. This claim has been acknowledged by subsequent Mexican administrations but no payment whatsoever has been made by the Mexican Government.

It is clear that the claimant has a valid claim under the contract against the Government of Mexico for his expenses in the preparation of new plans for the construction of the dam. The claimant by express statements, the President of Mexico by appointing an arbitrator under the contract, and the arbitrator in his report have all treated the expenses as part of the costs of construction under the contract, and it is on this basis that the arbitrator awarded the claimant the fee of 10 per cent of said expenses. Contractual claims of this sort are within the jurisdiction of this Commission. *Illinois Central Railroad Company* (United States v. Mexico) Opinions of the Commissioners (1927) 15, 18, 20; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685. The claimant's offer in 1934 to waive his right to receive the 10 per cent fee and all interest was made without consideration and therefore it does not now affect his right to assert before this Commission a claim for the full amount awarded by the arbitrator.

In the opinion of this Commission it is proper to allow interest on the principal amount of the debt from the date of the award of the arbitrator, i. e., June 5, 1934.

The Commission accordingly awards the claimant the principal amount of \$107,771.29, with interest thereon, as provided by section 7 of the Settlement of Mexican Claims Act of 1942, from June 5, 1934.

DECISION No. 131-E

AMC Docket No. 66. Claimant: Bethlehem Steel Corporation. Amount claimed: \$2,578,070.72. Amount awarded: \$324,187.50.

This claim in the amount of \$2,578,070.72 is based upon the cancellation of title to a mining concession by the Government of Mexico in 1937. This Commission has jurisdiction over this claim under the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. The claimant, Bethlehem Steel Corporation, has established that it is the owner of 9,960 shares out of 10,000 shares of a par value of 100 pesos each of the stock of the *Compania de Minas de Fierro las Truchas, S.A.* (hereinafter referred to as *Las Truchas*) a Mexican corporation. The individual claimants, Robert E. McMath and Frederick A. Shick each own 5 shares of the stock of *Las Truchas*, having owned said stock since November 30, 1923. The other individual claimant, Myrl L. Jacobs, has owned 5 shares of said stock since February 15, 1940. The American nationality of the Bethlehem Steel Corporation and the individual claimants above named is established.

On October 5, 1907, the Government of Mexico, acting under a Mexican mining law of 1892 issued title No. 37596 to the *Compania de Minas del Pacifico, S. A.* (hereinafter referred to as *Pacifico*) a Mexican corporation. The original concession issued by the President of Mexico provided in part as follows:

"I have deemed it proper to issue to him this title which guarantees to him the ownership of the iron mine, with a surface of 620 hectares, named "Las Truchas", without prejudice of third parties who might have better rights.

"Therefore, I hereby order the authorities of the State of Michoacan and other authorities in the Republic, not to disturb said Compania Minas de Fierro del Pacifico, S.A. in the property which it has acquired, but on the contrary to uphold it in the free use, turning to profit, domain and possession which may correspond to it, with the obligation on its part to abide by the provisions of the mining law of the Mexican United States and its respective regulations."

The mining law of 1892 contained the following provisions relative to forfeiture of mining properties:

"Art. 5. Mining property lawfully acquired and that which may hereafter be acquired in conformity with this law, shall be irrevocable and perpetual after payment of the federal property tax, in accordance with the provisions of the law establishing said tax.

"Art. 29. The failure to pay the property tax, according to the provisions and procedure of the law that establishes it, shall constitute, from the date of enforcement of this law, *the only cause for the forfeiture of mining properties*, which, in that case, shall be free of every burden and shall be granted to the first applicant, in conformity with the provisions of this law and the Regulation thereunder." (Mining Law of the United States of Mexico and the Law on the Federal Property Tax on Mines with the Regulations Thereunder, Library of Congress, 1892, pp. 7, 33, 34)

Said concession also provided as a sole ground for forfeiture, the nonpayment of the Federal property tax.

A decree issued September 14, 1916, provided in part as follows:

"All concessionaires of mines are obligated to work the same under penalty of forfeiture, if they suspend work for more than two consecutive months, or in any event for more than three months during any one year."

In 1917 Mexico adopted a new constitution. One provision of this constitution which concerns the ownership of natural resources provides in part as follows:

"Art. 27. . . . In the case to which the two foregoing paragraphs refer, the ownership of the Nation is inalienable and may not be lost by prescription; concessions shall be granted by the Federal Government to private parties or civil or commercial corporations organized under the laws of Mexico, only on condition that said resources be regularly developed, and on the further condition that the legal provisions be observed. . . ."

Article 14 of the 1917 constitution provided that:

"No law shall be given retroactive effect to the prejudice of any person whatsoever."

On January 27, 1919, Pacifico by properly registered deed of transfer sold to Las Truchas all its right, title and interest in and to the Las Truchas mining concession above described. At the

time of such transfer a letter was issued by the Department of the Treasury of Mexico, dated January 25, 1919, in which it is stated:

"that the titles of all said properties are in force, including the title of Las Truchas, which though having been declared forfeited, this forfeiture was revoked by Order No. 3595 dated February 27, 1918; for which reason said title is also in force."

The purchase price of the said concession was \$325,000.00 (United States currency).

Subsequent to the purchase of the concession by Las Truchas in 1919 exploratory tunnels were made on the property. This work was continued until 1928. It is alleged by the claimant that the total cost of this exploratory and developmental work was in excess of \$750,000.00. The claimant or Las Truchas did not undertake the mining of iron ore for use or sale except to the extent that samples were obtained for tests in connection with the above-described exploration operations.

Mexico adopted two mining laws subsequent to the said Constitution of 1917. The first of these was the Mining Law of 1926. Article 46 of this law provides as follows:

"Art. 46. The granting of new concession for mining exploitation will not be required in connection with land that is covered by a title issued in conformity with the law of November 25, 1909, or those which preceded it, as long as this title does not become lapsed, in accordance, respectively, with the same Laws, but the execution of the works of exploitation shall be subject to the relative regulations of the present Law. In connection with everything concerning the matter of titles or concessions issued to foreigners or to foreign companies within the territory of the prohibited zones, these will be subject to what is ordained in the Organic Law of section I of Article 27 of the Constitution and Regulations."

In 1930 another mining law was adopted. Article 18 of this law which is also relevant in the present case provides as follows:

"Art. 18. The granting of new mining exploration or exploitation concessions will not be required for lands covered by titles issued in accordance with the Law of May 3rd, 1926, or with prior laws, as long as such titles were not cancelled, in accordance, respectively, with the same laws; but the corresponding mine workings shall remain subject to the Regulations of the present law."

The Mining Law of 1930 also provides for the repeal of all previous mining legislation in Article 124 as follows:

"Art. 124. This Law shall become effective on the first of October 1930, and on that date the Law of Mineral Industries of May 3rd 1926 and all other prior mining legislation shall be abolished, except in cases wherein said Laws shall govern as provided in this Law."

The Mining Tax Law of 1929 has the following provisions in Article 6 which is also relevant to the present claim:

"Art. 6. The tax shall be payable from the mere fact that

the respective title or concession is alive even though the property is not being worked or is not in the possession of the taxpayer."

Between 1919 and 1936 the Mexican Government did not call upon claimant to work the mines and made no contention that said concession was subject to said mining decree of 1916 which imposed the requirement for working the mines continuously.

In 1936, for the first time, Las Truchas was advised by the mining agent for the District of Salazar that the Government of Mexico had decided to declare a forfeiture of the Las Truchas concession for the failure of the company to work said mine continuously as was required by the mining decree of September 14, 1916. A letter to Las Truchas by said mining agent dated November 10, 1936, granted Las Truchas the right to submit such documents and other evidence as it might wish in order to establish compliance with the decree of September 14, 1916. On January 19, 1937, Las Truchas filed a brief with the Department of the National Economy. On May 20, 1937, it instituted an amparo action in the First District Court of Administrative Matters asking for a temporary suspension of the proposed forfeiture. It was its contention that its concession was not subject to the requirement for working a mine imposed by the 1916 decree. On August 23, 1937, the mining agent informed Las Truchas that the Ministry of National Economy had declared the said concession forfeited on June 8, 1937. On August 31, 1937, Las Truchas instituted a second amparo proceeding asking a permanent suspension of the order of forfeiture. On June 24, 1938, the said First District Court rendered a decision in the second amparo action in favor of Las Truchas. An appeal was taken by the Government of Mexico to the Supreme Court of Mexico. This court on August 2, 1939, reversed the decision of the District Court and affirmed the order of forfeiture.

By a decree of December 31, 1943, published in the *Diario Oficial* February 7, 1944, the Congress of Mexico amended the Mining Law of 1930 and in particular amended Article 18 of said law to provide as follows:

"Art. 18. The issue of new concessions of mining exploration or exploitation shall not be required for lands covered by titles issued under the Law of Mining Industries of May 3, 1926 or prior laws, so long as such titles do not lapse in accordance with the causes respectively designated in such laws and for failure to prove regular work in the terms provided in the regulations of this law."

By a decree dated September 19, 1944, the Department of the National Economy issued regulations concerning the new requirements set forth in the amended Article 18 of the Mining Law. This decree provided in part as follows:

"Whereas, by virtue of the modifications made in Article 18 of the present Mining Law by Decree of December 31, 1943, published in the *Diario Oficial* of February 7, 1944, all owners of mining exploitation rights have become obliged to carry on the regular work demanded by Article 27 of the Constitution;

* * * * *

"Whereas, . . . it is not equitable nor proper to demand the proof of the execution of regular work, until the . . . period of three years has elapsed, from owners of mining exploitation rights who until February 11, 1944, when the said decree of modification took effect, *were not subject to such obligation. . . .*"

As above indicated, the Supreme Court of Mexico on appeal held that the forfeiture was proper. The basic argument of the Mexican Supreme Court is stated in the following language from its opinion:

" . . . the grounds of forfeiture for mining concessions are of public interest, since the direct domain of the nation to said mines is maintained through the concessions. Fundamentally, individuals cannot acquire rights contrary to public interest. . . ."

This Commission is of the opinion that in passing on this claim it is unnecessary to determine whether the Supreme Court of Mexico in said decision misconstrued the mining laws of its country; that it is likewise unnecessary for this Commission or the Government of the United States to question the right of the Government of Mexico as a sovereign state to take such action with regard to mining concessions as it may deem proper or suitable in the public interest. It is the opinion of this Commission however that the provisions of the decrees of December 31, 1943 and September 19, 1944 indicate a legislative construction that we deem applicable to claimant. The Commission is of the opinion that to fail to accord to claimant in connection with its concession the same right to comply with the provisions of said decrees respecting the carrying on of "regular work demanded by Article 27 of the Constitution" within 3 years in the future as is accorded to all other holders of concessions to which said decrees were similarly applicable would be to discriminate against claimant in such a manner as to cause it to suffer a loss for which it is entitled to be compensated.

It is an established principle that any unjust discrimination in the application of the laws of any nation is below the established standard of international law and constitutes a denial of justice. This has been held to be the case with reference to the imposition of taxes. (Borchard on *Diplomatic Protection of Citizens Abroad* (1922) p. 95)

It has also been held to apply to the operation of the criminal law. (II Hyde, *International Law*, p. 921)

It has been held to apply to the expropriation of property. Mr. Charles Evans Hughes, Secretary of State, stated the position of the United States in this respect as follows:

" . . . Concerning the question whether the Chinese authorities may exercise the right of eminent domain over property owned by American citizens in China, the Department may state that since the right is so essential to the existence of any sovereign state, the Department would not be inclined to question the exercise of the right by China in an appropriate case, that is, for a public purpose, but would of course

be under the necessity of insisting that just compensation be made for any property taken or damaged, and that there shall be no discrimination in this respect against American citizens." (The Secretary of State (Hughes) to the Minister in China (Schurman), No. 120, March 27, 1922, MS. Department of State, File 393.115/4)

It has also been stated by the Secretary of State, Mr. Lewis Cass, with respect to contractual obligations:

"What the United States demand is that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities, and questions have arisen or shall arise respecting the fidelity of their execution no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract, if there are any; or if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such a manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to."

Upon the question of damages, this Commission has examined the expert testimony as to the quantity of ore in the concession, the cost of extraction, the probable cost of transportation, and the probable sales price in the United States, and all the other difficulties and risks involved in so large an operation as an iron mine in Mexico. Taking all these facts into consideration the Commission is of the opinion that the fair value of the concession at the time it was forfeited was \$325,000.00.

Accordingly, an award is made in the sum of \$324,187.50 of which the claimant, Bethlehem Steel Corporation, is entitled to the sum of \$323,700.00 (9960/10,000 of \$325,000.00) and the claimants, Robert E. McMath, Frederick A. Shick and Myrl Jacobs, are entitled to the sum of \$487.50 (15/10,000 of \$325,000.00), in equal proportions. Awards shall bear interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from June 8, 1937.

DECISION No. 35-E

AMC Docket No. 67. Claimant: Eloisa Brittingham. Amount claimed: \$49,413.88. Award: disallowed.

This is an agrarian claim, in the amount of \$49,413.88, based upon the expropriation of 2,487 hectares of land in the State of Chihuahua under a Presidential Decree dated June 13, 1929, and published July 16, 1932, and 13,520 hectares of land under a Presidential Decree dated October 6, 1937, and published January 15, 1938. The claim was not filed with any previous commission.

Agrarian claims not previously filed, over which this Commission has jurisdiction, are described in paragraphs (1), (2) and (3) of section 3(a) of the Settlement of Mexican Claims Act of 1942. Since it is clear that a claim of this character, based upon Presidential Decrees made and published on the aforesaid dates, does not come within any of the categories enumerated in said paragraphs, it follows that the Commission is without jurisdiction to pass upon the same.

It is accordingly ordered that this claim be disallowed for want of jurisdiction.

DECISION No. 82-E

AMC Docket No. 68. Claimant: Henry Burrell. Amount claimed: \$3,356.80. Amount awarded: \$3,356.80.

This is a claim for losses resulting from the alleged expropriation of 127 hectares of land situated in the State of Sinaloa, Mexico, under two Presidential Decrees both dated September 21, 1938. The title to the land rested in a Mexican partnership, the Henry Burrell y Compania Civil Limitada, which had been organized by claimant and one Arthur W. Stonum, both alleged to have been American citizens and owning equal interests in said partnership.

At the time of the organization of this partnership, claimant and his associate acquired some 286 hectares of land which they presumably farmed for several years. No information is furnished as to the income from the property. It appears that the information as to use of the property and its productivity was in the hands of the partner Stonum but that he is deceased and the evidence is not now available. No claim has been filed for Stonum's interest.

The claimant herein has furnished satisfactory evidence as to his American nationality.

The two Presidential Decrees, aforesaid, expropriated 45 and 82 hectares of land respectively. One of the decrees was published on February 15, 1939, the other on February 16, 1939, in the *Diario Oficial*. The lands were classified as 75 hectares of irrigated and 52 hectares of temporal land, a total of 127 hectares.

It is recited in each of the Presidential Decrees that neither the Mixed Agrarian Commission nor the Governor of the State had previously issued any order on the petition for *ejidos*. This indicates that no provisional possession was given and that the claimants could have had no knowledge of the execution of the Presidential Decrees until some action was taken by the Mexican authorities pursuant thereto. Claimant admits receipt of notice by mail of the decrees under date of December 5, 1938, such notice presumably being a notice of the ceremony of definitive possession.

The facts above recited clearly bring this claim within the rule laid down by this Commission in the Lamm claim (AMC Docket No. 17). In accordance with the ruling in that claim, this Commission holds that the present claim arose on the date when claimant had knowledge of the expropriation, to-wit, December 5, 1938. Claimant might have filed this claim with the Agrarian Claims Commission, but did not do so. This fact does not seem to us to preclude him from prosecuting this claim before this Commission, under section 3 (a) 3 of the Settlement of Mexican Claims Act, which provides that this Commission shall determine

"Agrarian claims which arose between December 1, 1938 and October 6, 1940, inclusive, and which were not filed with the Agrarian Claims Commission on or before July 31, 1939."

This claim being one within our jurisdiction, we are brought to the question of damages. Claimant has submitted evidence as to the value of the property expropriated, including evidence con-

cerning the irrigation of the land, and seeks recovery of the money invested in the property. This he alleges to be \$3,356.80, which is half the proportionate share of the investment in the property actually expropriated. Although the sum invested in property is not a satisfactory measure of value, we find from the evidence submitted herein as well as in other claims for similar property in that section of Mexico that the half interest of claimant in the 127 hectares of land expropriated was worth at least the amount asked by claimant.

The claimant herein, Henry Burrell, is, therefore, awarded the principal sum of \$3,356.80, with interest thereon from December 5, 1938, the date the claim arose.

DECISION No. 7-E

AMC Docket No. 69. Claimant: Eleanor Pratt Howard Burt. Amount claimed: \$87,561.00. Amount awarded: \$18,796.99.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

It is based upon the expropriation of 400 hectares of land comprising a portion of the hacienda Huejotitlan, situated in the Municipality of Teocuitatlan, State of Jalisco, Mexican, under three Presidential decrees dated August 23, 1939 and December 27, 1939.

The property was acquired by the Compania Refaccionaria Jalisciense, S. A., a Mexican corporation, on or about April 14, 1916. At all times pertinent to the instant claim the claimant, an American citizen, was the owner of 99.984 per cent of the stock of that company.

The area expropriated was described in the several decrees of expropriation as 135 hectares of temporal land and 265 hectares of pasture land. In claimant's affidavit of claim dated May 17, 1940, claim was made as follows:

135 hectares of temporal land at \$125 per hectare.....	\$16,875
265 hectares of pasture land at \$100 per hectare.....	26,500

43,375

Subsequently, on the basis of an appraisal made of the property by two Mexican engineers on March 28, 1942, claimant increased the amount claimed for the 400 hectares to \$85,470.30. At that time claim was also made for attorney's fees in the amount of \$2,090.70. The appraisal just mentioned appears to be based upon the estimated, potential productivity of the lands, however, rather than upon the demonstrated earning capacity thereof. Much of the other evidence presented in support of the claim is of a similar character.

It is shown by the evidence contained in the record that the 135 hectares of land classified as temporal is located to a large extent in close proximity to an ample water supply and this area evidently consists of land of very good quality. In the opinion of the Commission, it may reasonably be regarded as having a value equal to that of lands classified as irrigated in another claim of this claimant involving a different portion of the same hacienda (Agrarian Docket No. 116), to wit, \$100 per hectare. The re-

maining 265 hectares, which were expropriated and which are classified as pasture lands, may reasonably be regarded as having a fair value of \$20 per hectare. This amounts to a total value of \$18,800 for the 400 hectares involved in the claim. Of this amount claimant's interest is 99.984 per cent or \$18,796.99.

The item of claim for attorney's fees does not, in the opinion of the Commission, constitute a proper item of claim in a case of this nature.

An award is accordingly made in favor of the claimant in the principal amount of \$18,796.99 with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 71-E

AMC Docket No. 70. Claimant: Eleanor Pratt Howard Burt. Amount claimed: \$149,918.70. Amount awarded: \$22,606.40.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

It is based upon the expropriation of 2,456.8 hectares of land comprising a portion of a tract known as El Remate, situated in the Municipality of San Sebastian, State of Jalisco, Mexico, under a Presidential Decree dated April 30, 1940.

The El Remate property was acquired by John L. Burt, husband of the claimant, on or about April 14, 1914, for a recited consideration of 15,700 pesos. While the area thereof is variously described, the Presidential Decree states that it is 11,008.15 hectares.

On or about March 24, 1915, the said John L. Burt acquired two other tracts in the same municipality, known as El Guyabito and Potrero de las Mulas, with areas approximately 60 hectares and 8,296 hectares, respectively, for a consideration of 22,500 pesos. The El Remate and Potrero de las Mulas tracts adjoined each other.

On or about October 8, 1925, there was organized in Mexico the Compania Ganadera Nacional, S.C.P., with a capital of 23,000 pesos, consisting of 46 shares having a par value of 500 pesos each. John L. Burt conveyed the aforesaid three tracts to said company. The capital stock thereof consisting of 46 shares each having a par value of 500 pesos was acquired by claimant prior to the time this claim arose, and she now owns the same. Her American citizenship is satisfactorily established.

The area expropriated is described in the said decree as:

516.12 hectares tillable land.
1,940.68 hectares pasture land.

On the basis of an appraisal made of the properties by two Mexican engineers on March 12, 1942, claim is made for the expropriated 2,456.8 hectares as follows:

764.88 acres irrigated land at \$100 per acre.....	\$76,488.00
509.92 acres temporal land at \$50 per acre.....	25,496.00
4,793.47 acres pasture land at \$10 per acre.....	47,934.70

149,918.70

Claimant has inadvertently computed the aforesaid total to be \$149,920.11.

These engineers also estimate the area of unexpropriated land to be 20,718.5823 acres, which they evaluate at \$10 per acre, or \$207,185.82. Their total estimate for both expropriated and unexpropriated land is \$357,105.93. To this claimant has added the item of \$1,800.00 for expenses of his Mexican attorney in connection with the agrarian proceedings. The total amount claimed upon the basis of said calculations, is, therefore, \$358,905.93.

The fiscal evaluation of the properties for tax purposes during the years 1935-1939 was 22,000 pesos. Claimant had neither cultivated the expropriated land nor received any income therefrom, and no basis is laid for comparison with other lands of similar character in the vicinity having actual production. It appears, therefore, that the aforesaid valuation of the Mexican engineers is based upon hypothetical and speculative estimates of potential production of the land rather than upon any demonstrated earning capacity thereof.

The Commission finds that the expropriated area, as described in the decree, comprised 516.2 hectares of tillable land and 1,940.68 hectares of pasture land. In the opinion of the Commission the expropriated area of 2,456.8 hectares of land may reasonably be regarded as having the following value on April 30, 1940, the date of the expropriation:

516.12 hectares tillable lands at \$25 per hectare.....	\$12,903.00
1,940.68 hectares pasture lands at \$5 per hectare.....	9,703.40
	22,606.40

The record contains no showing of any conduct on the part of the Mexican Government connected with the occupancy of the unexpropriated land without claimant's consent which would create liability therefor on the part of Mexico. The claim for such occupancy is therefore disallowed. The claim for the item of \$1,800.00 for expenses for claimant's Mexican attorney in connection with the agrarian proceedings is likewise disallowed.

An award is accordingly made in favor of the claimant in the principal amount of \$22,606.40 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from April 30, 1940.

An application has been made by Edgar Turlington, as a member of the firm of Roberts and McInnis, attorney for claimant, pursuant to section 5 (c) of the Act aforesaid, for determination and apportionment by the Commission of the attorney's fees for services rendered herein. The application is for a fee equal to ten percent of the recovery, which Mr. Turlington states was the agreed amount of compensation for his legal services according to an exchange of letters between him and Mr. J. L. Burt, acting on behalf of claimant, dated, respectively, September 20 and September 25, 1944, and approved by claimant on September 25, 1944. The application is opposed by claimant. The Commission finds upon the entire record that the firm of Roberts and McInnis is justly entitled to ten percentum of the award

herein and, accordingly awards to them as and for attorneys' fees ten percentum of the award, or \$2,260.64.

The award of \$22,606.40 with interest as provided in section 7 of the Act aforesaid from April 30, 1940, is to be distributed as follows:

To Eleanor Pratt Howard Burt.....	\$20,345.76
To Roberts and McInnis	2,260.64

DECISION No. 80-E

AMC Docket No. 72. Claimant: M. C. Domenigoni. Amount claimed: Not stated. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

It is based upon the alleged expropriation of 1,179 hectares of land situated in Lower California, Mexico. No affidavit of claim setting forth the facts or the amount claimed has ever been filed. No documentary evidence establishing nationality, ownership of land or its expropriation has been submitted.

In the absence of such evidence the claim is disallowed.

DECISION No. 48-E

AMC Docket No. 73. Claimant: Earl P. Foster. Amount claimed: \$44,570.00. Award: disallowed.

This is an agrarian claim and is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the alleged expropriation of 15 acres of land and three city lots which claimant purchased from Jantha Plantation Company in 1909 and 1911.

As evidence of title claimant has submitted an original deed from Jantha Plantation Company dated June 3, 1926, conveying two lots and two five acre tracts of land to him. He has also submitted a contract for deed to the said property from the same company, dated March 20, 1911. Neither of these instruments was ever recorded as required by Mexican law.

Claimant contends that his property was expropriated by a Presidential Decree of March 5, 1934, which took 124 hectares from the property known as "El Porvenir," described as belonging to Jantha Plantation Company. This contention, however, does not appear to be borne out by the record. The proof is to the effect that this company owned some 11,500 hectares of land but that the portion thereof affected by said decree was more than five miles from the land said company had conveyed to claimant.

While reports of the American Consul at Veracruz indicate that other portions of the lands once owned by Jantha Plantation Company were expropriated under four provisional decrees, all dated July 8, 1938, and that three of these decrees were later confirmed by Presidential Decrees, there is likewise no showing that any land owned or claimed to be owned by claimant was affected by any of said decrees. Moreover, the record discloses that prior to March 23, 1934, the Jantha Plantation Company had executed a mortgage in favor of one Amezcua Diaz, a Mexican citizen, on all lands owned by it. In a suit instituted to fore-

close said mortgage, a judgment was rendered in favor of the mortgagee on February 8, 1935, and pursuant thereto a deed to said lands was issued to said mortgagee on November 1, 1935.

As noted above claimant did not record his deed from Jantha Plantation Company. The aforementioned judgment of foreclosure, therefore, divested claimant of any title which he had prior to the expropriations of 1938, and Mexico incurred no liability to claimant by reason of said expropriations.

Claimant has failed to establish that any property belonging to him has been expropriated or otherwise wrongfully interfered with by the Government of Mexico.

The claim is therefore disallowed.

DECISION No. 42-E

AMC Docket No. 74. Claimant: W. T. Gardner. Amount claimed: \$15,000.00. Award: disallowed.

This is an agrarian claim for the sum of \$15,000.00 and is before the Commission pursuant to the provisions of Section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the alleged expropriation of 646 hectares of land known as Las Animas, situated in the Municipality of Mapastepec, State of Chiapas, Mexico.

Expropriation of only 214 hectares of said land appears to have been effected by a resolution of the Governor of the State of Chiapas dated September 24, 1938, and published October 19, 1938. This was confirmed by Presidential Decree dated June 7, 1939.

In a letter dated December 3, 1940, from the American Consul at Veracruz to the Department of State at Washington, D. C., it is stated that the "Las Animas" property of claimant had been adjudicated to the Government of the State of Chiapas on August 9, 1938, for failure to pay taxes and that the property now belongs to the State. This information was furnished claimant by this Commission in June 1943, and he has made no showing to refute same.

The Commission therefore finds that claimant had no title to the property involved at the date of the provisional decree of expropriation.

The claim is accordingly disallowed.

DECISION No. 19-E

AMC Docket No. 76. Claimant: George F. Hassinger. Amount claimed: Not stated. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

It is based on the alleged confiscation of twenty acres of land near Altamira, Tamaulipas, Mexico, belonging to M. F. Hassinger and his brother who claim ownership as the sole heirs of their father, George F. Hassinger, who is said to have died in 1941. It is alleged that George F. Hassinger purchased the land in 1910 and that it had been confiscated several years ago.

The claimants have submitted no evidence to establish their American citizenship nor any proof of ownership of the land. Neither is there any evidence that their land has been expropri-

ated by the Mexican Government nor that said Government has taken any wrongful action with respect to their property.

The claim is, therefore, disallowed.

DECISION No. 20-E

AMC Docket No. 78. Claimant: Floyd Honecker. Amount claimed: Not stated. Award: disallowed.

This claim for an unstated amount is before the Commission pursuant to section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

Claimant's attorney advised the Commission by letter dated November 24, 1943, that claimant wished to file a claim for 340 acres of land in Tamaulipas which it was understood had been expropriated by the Mexican Government, and inquired as to the proper procedure to be followed in presenting a claim. The Commission furnished said attorney with full instructions and the above docket number was assigned to the claim. No further action has been taken by or on behalf of said claimant.

The claim is, therefore, disallowed.

DECISION No. 112-E

AMC Docket No. 79. Claimant: David R. Huston. Amount claimed: \$2,660,000.00. Amount awarded: \$10,000.00.

The claimant herein asks damages for the alleged seizure of a fish processing plant and for the alleged illegal cancellation of a concession of the right to fish in certain Mexican waters and to process such fish products. The amount is divided by claimant into two items of claim, one for the alleged value of the concession and the other for moneys which claimant states he invested in the plant established at Rosarita, Lower California. Claimant has filed various supplemental pleadings which allege his losses to aggregate billions of dollars.

The proof established claimant's American nationality at all times pertinent to this claim.

It is alleged that in 1920 a Mexican citizen, named Antonio R. Pena, obtained a concession that permitted the catching of fish in waters of Mexico jurisdiction off Lower California, in the Gulf of California and off several states on the mainland. Such concession also granted the right to build on land under Federal control a factory, warehouse and other facilities for the processing of fish and the manufacture of by-products. It was provided that the concession should continue for 18 years; that the concessionaire should have the right to import machinery for the purposes of the concession duty free. It was required by the concession that such concessionaire should market the products at Mexico City and should perform certain other duties.

In 1921 the holder of the concession gave a power of attorney to one J. B. Scolari for the purpose of transferring title to such concession. Said Scolari, one Pepler and one Rosada joined with the claimant, David R. Huston, in organizing a Mexican company to which the concession was to be assigned. Claimant alleges that although it was agreed that of the company's 100 shares of stock Rosada was to have 4 shares, and each of the others 32 shares, no stock was ever issued. He claims, however, that he bought the interests of the other original stockholders and that he

thus became the sole owner of such Mexican company, known as "Compania Empacadora de Comestibles 'La Italiana' Sociedad Anonima."

Although the provisions of the concession provided that it might be transferred, certain restrictions were placed on such transfer. One of such restrictions which must be considered in this claim was as follows:

"Art. 37. This contract will be considered null and void ipso facto, for any of the following circumstances:

"... III For transferring (by) the concessionary the rights which he acquires through this contract, to a Mexican company without prior authorization from the Department (of Fisheries) in writing."

The record discloses that although the concession is alleged to have been assigned to the company organized by claimant and his associates, no permission to assign was received from such department. In fact, it appears that permission was asked after the transfer was made and that such permission was definitely refused in writing. Notice of such refusal was specifically stated in a letter from the Department of Fisheries to the said Scolari. This letter, dated May 27, 1924, did grant an extension of time for completion of the plant.

It would appear that if the transfer to the company were completed such transfer, without approval, rendered the concession null and void. If the transfer were not complete, then permission had been refused so that the concession could not legally be assigned. In either case the corporation never had title to the concession.

Claimant, however, asserts that he was not familiar with the Spanish language, that his associates informed him that the letter granted an extension of time to complete the plant but did not tell him that permission to assign the concession had been refused. The claimant does not contend that the restriction on the assignment of the concession was illegal or unreasonable. His claim is that Mexico is liable for cancellation of his rights under the assigned concession. It appears to be predicated on the theory that claimant was ignorant of Spanish and that he was deceived by the representations made to him by his associates to the effect that the assignment to the corporation was valid. There is, of course, no merit to such a contention. It is clear that the corporation obtained no valid title to the concession and claimant therefore could sustain no loss by reason of the cancellation thereof.

The other item of claim rests upon a different basis. Claimant asserts that he started construction of a plant to process fish and that he installed other improvements on certain property which, he contends, had been selected by Mexican officials as the site for such construction and improvements and upon which land he had been ordered to place such construction and improvements. After construction had started, claimant alleges that he discovered that the government did not own the land in question, and that he thereupon secured a lease from the owner of the property. It is alleged that he constructed roads and dams and

built a building and a long pier for use in connection with the fish enterprise.

Claimant had constructed a fence surrounding the land upon which the above-mentioned building was located. On September 5, 1927, claimant endeavored to go upon the land and enter the building which he had erected, but on reaching the premises discovered that the said land and building as well as the aforementioned fence, had been enclosed by a more substantial fence; that the building was being used for the storage of road machinery and that at the entrance to the road leading to the building a heavy gate had been hung. Said gate was bound to posts with heavy chains and was padlocked, and upon said posts there was attached a notice in Spanish and English warning trespassers to stay out. Said notices bore the seal of the State of Lower California and were signed by Abelardo Rodriguez, Governor. Claimant was thus denied possession and use of his property. On recrossing the border to return to the United States, claimant's "passport or permit" was taken from him by the Mexican immigration official at that point, who refused to return same to claimant, and told claimant that he was acting under orders, stating that claimant would not be permitted to cross the line into Mexico until the Governor issued orders to that effect.

In the circumstances the action of the Governor in taking possession of claimant's property and in discriminating against claimant with respect to his re-entry into the country, thus prejudicially interfering with his ability to pursue his legal remedies in the premises, constituted, in this Commission's opinion, a denial of justice to claimant.

As to the amount of damage suffered by claimant, it appears that he was effectively deprived of his property and the measure of damages may fairly be held to be the value of said property at the time of its seizure.

Claimant has alleged that he expended \$165,000.00 on the construction of all the improvements, including the pier. However, no satisfactory evidence has been furnished to support this allegation.

In the absence of convincing testimony as to the value of the property the Commission must resort to an estimate as to the amount of loss sustained by the claimant. Since the pier according to claimant's own statement, was destroyed prior to the seizure of his property by Mexican authorities, such estimate must be limited to the value of the building on September 1, 1927. An inspection in 1946 of the site of the building discloses that all traces of the improvements except some remains of the foundation had disappeared. From such inspection and such evidence as had been submitted which is deserving of consideration the Commission concludes that \$10,000.00 would be a fair and reasonable compensation to the claimant for the losses established by the record.

The claimant herein has filed an amended claim, together with an assignment of interest, asking that 25 percent of any award be made to William N. Maben and the balance to the original

claimant. The nationality of the said William N. Maben has been satisfactorily established.

The claimants herein, David R. Huston and William N. Maben, are accordingly awarded the principal sum of \$10,000.00 with interest thereon from September 1, 1927, according to the provisions of Section 7 of the Settlement of Mexican Claims Act of 1942, said sum to be apportioned as follows:

To David R. Huston	\$7,500.00
To William N. Maben	2,500.00

DECISION No. 59-E

AMC Docket No. 80. Claimant: International Land and Investment Company. Amount claimed: \$27,416.67. Amount awarded: \$7,975.75.

This is an agrarian claim in the amount of \$27,416.67, with interest, and is based upon the expropriation of 1,316 hectares of land comprising a portion of the hacienda de Santa Ana de la Florida, situated partly in the Municipality of China, State of Nuevo Leon, and partly in the Municipality of Burgos, State of Tamaulipas, Mexico, under a decree of the Governor of the State of Tamaulipas, dated March 16, 1939. Provisional possession of the area expropriated was given to the agrarians on March 17, 1939. The decree of the Governor was confirmed by Presidential Decree dated November 13, 1940.

The hacienda de Santa Ana de la Florida, alleged to contain a total area of about 60,000 hectares, was acquired by the claimant, an American national, on or about April 20, 1908, for a consideration of 100,000 pesos. Very little evidence of a satisfactory nature is furnished regarding any use made of the property by the claimant at any time or with reference to the nature or amount of income derived therefrom. In a communication from the President of the claimant company to this Commission dated July 5, 1944, it is stated that prior to 1910 the company had installed expensive pumping equipment on the Conchos river and had started preliminary work with a view to subdividing and colonizing the property but that following the outbreak of the revolution in 1910 it was not possible to continue that program.

The area expropriated (1,316 hectares) is described in the aforesaid decrees as being pasture and brush lands but claimant asserts that all of that area lies along the Conchos river and should be classified as humedad land, all of it being susceptible of irrigation. It is added that the 1,316 hectares are

"... densely covered with heavy monte, mesquite trees up to two feet in diameter growing on this lush bottom land."

In support of the alleged value of 75 pesos per hectare, claimant relies upon a report made in March 1944, as to the estimated value of timber on a 300 hectare tract comprising a portion of the adjoining hacienda de San Juan de la Vaqueria, also owned by the claimant, which tract is claimed by it to be similar in value to the 1,316 hectares involved herein. The only other evidence concerning the value of the expropriated area is in the form of a sworn statement of one W. S. Dorset, dated November 26, 1943, to the effect that 75 pesos per hectare is a fair value therefor by reason of its location on the Conchos river.

After carefully considering and weighing the evidence adduced, the Commission concludes that 30 pesos per hectare or 39,480 pesos for the 1,316 hectares constitutes reasonable compensation for the expropriated area. The claim for interest from May 1937, is disallowed. It is not shown that claimant's possession of the land was interfered with prior to the granting of provisional possession on March 17, 1939. The rate of exchange on the latter-mentioned date was 4.95 x 1. On the basis of the above-indicated value, the expropriated area is evaluated at \$7,975.75, and an award is accordingly made in favor of the claimant in that amount with interest as provided in Section 7 of the Settlement of Mexican Claims Act of 1942, from March 17, 1939.

DECISION No. 51-E

AMC Docket No. 81. Claimant: Jantha Plantation Company (Mrs. J. M. Bain). Amount claimed: Not stated. Award: disallowed.

This claim is brought by Mrs. J. M. (Marie) Bain, a stockholder in the Jantha Plantation Company, for an unstated amount and is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

Mrs. Bain claims ownership of one-third of the stock of Jantha Plantation Company, a corporation organized under the laws of West Virginia, and alleges that its properties "San Francisco" and "El Porvenir" were expropriated by the Mexican Government. It appears that said corporation was dissolved by court decree on July 14, 1934. A receiver was appointed for it but no claim was filed by or on behalf of said receiver, and the present claimant received no allotment from the corporation or its receiver.

The proof establishes that the corporation executed a mortgage on its said properties in favor of one Amezcua Diaz, a Mexican citizen, some time prior to March 23, 1934, and that on said date he filed suit for foreclosure. Judgment of foreclosure was rendered February 8, 1935, and pursuant thereto, said Mexican mortgagee acquired title to the property on November 1, 1935.

Except for one expropriation of 124 hectares effected by a Presidential Decree of March 5, 1934, for which no claim was filed with the Agrarian Claims Commission prior to July 31, 1939, and which is barred from consideration by this Commission, all expropriations affecting the "San Francisco" and "El Porvenir" properties occurred during the years 1938 and 1940. This was subsequent to the time that Jantha Plantation Company was divested of title thereto under the aforesaid foreclosure proceedings.

In the foregoing circumstances no proper basis exists for an award to the corporation, its receiver or any of its stockholders. The corporation having no title, it could not properly assert a claim for loss through these expropriations. The claimant whose claim is predicated upon her ownership of stock in said corporation is in the same position.

The claim is accordingly disallowed.

DECISION No. 8-E

AMC Docket No. 82. Claimant: Abraham Silberberg, individually, and

as executor of the will of Elena Rebecca Silberberg, deceased. Amount claimed: \$1,092,160.00. Amount awarded: \$167,575.00.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is based upon the expropriation of 36,554 hectares of land situated in the Municipality of Atoyac, State of Guerrero Mexico, under a Presidential decree dated November 8, 1939.

Claimant's interest was acquired as follows:

Robert Silberberg and his brother, Abraham Silberberg (the latter, claimant herein) both American citizens, for many years prior to the death of the former in 1926, engaged in various commercial transactions as partners under the name of Silberberg Brothers.

On the following dates Charles Newman and Robert Silberberg (the latter acting for the partnership of Silberberg Brothers) acquired by purchase the five contiguous tracts of land indicated below, situated in the above-mentioned Municipality of Atoyac, State of Guerrero.

Date	Tract	Purchase price recited in deed (pesos)
July 13, 1907.....	El Camalote, Mesa de los Venados and La Siberia.	36,500
July 15, 1907.....	San Esteban	500
July 15, 1907.....	Rincon Grande.....	10,000
		47,000

The areas of these tracts were not stated in the deeds of conveyance but claimant asserts that the total area of the five tracts was 60,533 hectares.

The deed of July 13, 1907, involving the *El Camalote, Mesa de los Venados and La Siberia* tracts, expressly excluded from that conveyance the coffee plantations and orchards located on those three parcels as well as certain areas surrounding those just mentioned.

On or about April 7, 1908, Charles Newman conveyed all his interest in the five tracts to the partnership of Silberberg Brothers.

It is asserted that on or about November 20, 1909, Silberberg Brothers acquired ownership of another tract of land containing 19,361 hectares known as *El Anexo*, which adjoined the other tracts mentioned above, thus making the total area of their holdings 79,894 hectares.

Robert Silberberg died on October 1, 1926. By the terms of his will, all of his estate passed to his widow, Elena Rebecca Silberberg, an American citizen.

Elena Rebecca Silberberg died on October 30, 1940. Abraham Silberberg, claimant herein, was designated as executor and trustee under her will. All of the beneficiaries of her estate are American citizens.

Claimant states that at the time Silberberg Brothers acquired their interest in the property, the Southern Pacific Railways of Mexico held an option from the owners to purchase 120,000 acres

thereof for \$1,000,000; that negotiations between the railroad company and Silberberg Brothers for the sale of that area continued during the years 1907 and 1908 during which time Silberberg Brothers declined an offer of the railroad company of \$600,000 for the 120,000 acres.

In the decree of the President of Mexico dated November 8, 1939, it is recited that the Silberberg property contained 47,003 hectares of which 10,664 hectares were pasture and timberland, with 28.5% tillable, the latter portion being occupied with coffee plantations, and 36,339 hectares of pasture and timberland with 10.4% tillable, the latter portion being used for the cultivation of cereals. The area expropriated under that decree (36,554 hectares) was described in the decree as follows:

10,664 hectares of pasture and woodland with 28.5% tillable and
25,890 hectares of pasture and woodland with 10.4% tillable

36,554

On the basis of the foregoing claimant classified the expropriated area as follows:

	Coffee plantings	Cereal cultivations	Pasture and woodland
28.5% of 10,664..	3,039	.....	.....
71.5% of 10,664..	.....	.....	7,625
10.4% of 25,890..	.....	2,692	.....
89.6% of 25,890..	.....	.....	23,198
	<u>3,039</u>	<u>2,692</u>	<u>30,823</u>

By application of these same percentages to the entire 79,894 hectares, claimant calculates the various classes of remaining land as follows:

Coffee plantings	Cereal cultivations	Pasture and woodland
3,604	3,193	36,543

Since it is contended that the above-mentioned expropriation reduced the value of the unexpropriated land by 90% of its value, the claim now made is formulated as follows:

United States
currency

Value of 3,939 hectares under coffee cultivation at \$30.00 per hectare	\$91,170.00
Value of 2,692 hectares under cereal cultivation at \$25.00 per hectare	67,300.00
Value of 30,823 hectares of pasture and timber lands at \$12.00 per hectare	369,876.00

Depreciation of value of the unseized lands as follows:

90% of \$30.00 per hectare on 3,604 hectares proper for coffee cultivation	\$97,308.00
90% of \$25.00 per hectare on 3,193 hectares proper for cereal cultivation	71,842.00
90% of \$12.00 per hectare on 36,543 hectares of pasture and timber land	<u>394,664.00</u>
	<u>563,814.00</u>
	1,092,160.00

In support of the damages set out above, claimant presents affidavits of two Mexican engineers, one of whom states he made

certain studies in 1909 of the Silberberg property, including its area, quality, etc. By assuming that the same percentage of coffee, cereal, pasture and woodland which the decree of November 8, 1939 stated was applicable to the area of 36,554 hectares expropriated thereunder, obtained throughout the entire 79,894 hectares allegedly owned by Silberberg Brothers, these engineers arrive at their estimates of the total extent of claimant's losses.

In affidavits of Antonio L. Cabanas, Municipal President of Atoyac, dated June 6, 1944, and of Ing. Manuel C. Loya, dated June 7, 1944, they estimated the value of coffee lands at from 150 to 300 pesos per hectare, cereal land at from 150 to 200 pesos per hectare, and woodland at 200 pesos per hectare.

These same affiants estimate that 30 percent of the entire area owned by Silberberg Brothers is susceptible to the growing of coffee, 25 percent to the cultivation of cereals and 45 percent to timber exploitation.

Although he states he never visited the property, one James B. Barker, in an affidavit of June 30, 1944, estimates the loss resulting from the expropriation referred to herein to be \$1,079,884.

The property appears to have been valued for fiscal purposes in 1930 at 240,000 pesos.

The Commission finds no sound basis for concluding on the record before it that the expropriation had the effect of reducing the value of the unexpropriated lands. Neither does it consider as warranted the inclusion in the claim of lands in coffee plantings which, as pointed out above, were expressly excluded from the sale to Newman and Silberberg Brothers of July 13, 1907. It is not clear whether or not there were coffee plantations on all of the several tracts owned by Silberberg Brothers. If coffee lands on tracts other than the three involved in the sale of July 13, 1907, were in fact taken from the claimants, they have failed to establish that fact in a satisfactory manner.

The Commission is not convinced that the values placed upon the property by the persons whose opinions are referred to above are adequately established. Considering the nature of the property as a whole, it is unnecessary for present purposes to make any fine distinction between the value of areas said to be susceptible of cereal cultivation, timber areas, etc. The Commission is of the opinion that substantial justice in this case would result from an appraisal of the expropriated area, with the exception of that said to be in coffee plantings, namely, 33,515 hectares, at the rate of \$5.00 per hectare, or in the total amount of \$167,575.

An award is accordingly made in favor of the claimant in that amount with interest as provided in Section 7 of the Settlement of Mexican Claims Act of 1942, from November 8, 1939.

DECISION No. 57-E

AMC Docket No. 83. Claimant: Edwin Chamberlain. Amount claimed: \$14,030.00. Amount awarded: \$7,365.65.

This is an agrarian claim in the amount of \$14,030.00, and is based upon the expropriation of 2,806 hectares of land comprising a portion of the hacienda Labor de San Diego, situated in the Municipality of Cerritos, State of San Luis Potosi, Mexico, under

two decrees of the Governor of that State dated March 14, 1940. It appears that provisional possession of the expropriated areas was given to the agrarians on April 4, 1940.

Details with reference to the acquisition of this property by the claimant, an American citizen, the use made thereof, et cetera, are set out in the appraisal made by the American Commissioner designated under the Agrarian Claims Agreement of 1938 between the United States and Mexico of the claim on behalf of this claimant which was filed with the Commission established under that Agreement.

In the latter-mentioned claim as in the present one, claim was made at the rate of \$5.00 per hectare for the area expropriated.

In the former claim all of the area involved was classified as pasture land and was appraised by the American Commissioner at 10 pesos per hectare. No objection was made to that appraisal by the claimant.

In the instant claim the area expropriated is described as 560 hectares of temporal land and 2,246 hectares as pasture land.

The evidence relied upon to establish the claimed value of \$5.00 per hectare for all of the land expropriated consists of an affidavit by a former manager of the property filed in support of the former claim and one additional affidavit of Antonio Vives presented in support of the instant claim. This evidence does not, in the opinion of the Commission, support a value of \$5.00 per hectare for the pasture land involved. On the basis of the evidence presented, the Commission considers that a value of 10 pesos per hectare is adequate for the pasture land and that the temporal land may reasonably be regarded as having a value of 25 pesos per hectare, which is substantially equivalent to the amount claimed, namely, \$5.00 per hectare.

Application of these values to the areas expropriated results in the total amount of 36,460 pesos, which is equivalent, in round numbers, at the rate of exchange (4.95 x 1) applicable at the time of expropriation, to \$7,365.65.

An award is accordingly made in favor of the claimant in the amount of \$7,365.65 with interest as provided by Section 7 of the Settlement of Mexican Claims Act of 1942, from April 4, 1940.

DECISION No. 106-E

AMC Docket No. 84. Claimant: Aurora Cuesta de Lake. Amount claimed: \$3,836,459.83. Award: disallowed.

This is a claim for indemnification for damages alleged to have been suffered by claimant as a result of the expropriation by the Mexican Government of certain properties of which claimant alleges she was part owner. The property in question consisted of an irrigation, drainage and hydro-electric project including approximately 50,000 hectares of land located near Lake Chapala, State of Jalisco, Mexico.

The claimant is one of eight children of one Manuel M. Gallardo, deceased, who was a Mexican citizen. All of said children are Mexicans except the claimant, who claims American nationality by virtue of her marriage to an American citizen, one Francisco Lake.

Claimant originally filed a claim with the Agrarian Claims Commission on July 31, 1939, the last day authorized for such filing. A revised claim was filed on May 31, 1940. That Commission made no appraisal of the claim, it appearing to it that no basis for a claim existed on the showing made.

In the claim before this Commission, claimant has listed some thirteen expropriation decrees dated from June 1, 1935 to April 10, 1939. Said decrees recite that a total of 26,922 hectares of land were expropriated, but they do not indicate that claimant had any interest therein. Claimant contends that additional expropriations have occurred which bring the expropriations to a total of 49,991.39 hectares of land, although she states that she can find no decrees covering these additional expropriations.

Claimant alleges that her father, Manuel M. Gallardo, at his death, left certain properties and contracts to her brother, Manuel C. Gallardo, with the understanding that he was to transact business for the benefit of the other children. It is alleged that he organized certain companies with estate funds and that these companies entered into a number of contracts with the Mexican Government, with banks and with others. In this way it is alleged that Manuel C. Gallardo secured large concessions of land and franchises to create drainage and irrigation projects and to construct a hydro-electric plant. It is claimed that upon completion of the said construction work on October 17, 1912 the said plant was delivered to the Mexican Government and that the said Government in turn ceded to one of said companies the 49,991.39 hectares above referred to.

It appears from exhibits submitted by claimant that the title to the said land was lost by the said company as a result of judicial proceedings in connection with the attempted collection of large loans of money which had been made to said company by the Mexican Government and the Banco Central Mexicano, and that the said title became vested in Nacional Financiera, S. A., and remained in said corporation until the dates of the expropriation decrees submitted by claimant.

An action was started in 1940 in the Mexican courts to set aside the will of Manuel C. Gallardo which had been executed in 1918 and admitted to probate shortly after his death in 1920. It was alleged in said action that said Manuel C. Gallardo was insane and therefore not legally competent to execute the will. The action which was unopposed was heard on June 3, 1940, and the court found that the testator had been insane in 1906 and that he was insane at all times thereafter, and was mentally incompetent to have executed a valid will in 1918. The probate of said will was therefore ordered set aside.

Claimant contends the 1940 decree establishes that all contracts and business transactions entered into by Manuel C. Gallardo were void in view of the aforementioned holding of the court that said Manuel C. Gallardo was mentally incompetent since 1906 and that, consequently, title to the land in question rested, at the dates of expropriation, in the heirs of Manuel M. Gallardo. This contention seems to us to be without merit. The

collateral attack thus made on the transactions of Manuel C. Gallardo cannot be sustained before this Commission.

It is an established principle of law that a finding of insanity in a probate proceeding is not *res judicata* of a testator's status of sanity or insanity. The rule is stated in Freeman, *Law of Judgments* (1925) Vol. 11, Sec. 901, as follows:

"So a denial of probate because of the decedent's mental unsoundness is not *res judicata* of his mental condition in a suit by the administrator to set aside a deed executed subsequent to the will, since the purpose of the probate proceedings was not to determine the decedent's status as to sanity or insanity but rather to adjudicate the validity or invalidity of the will, with respect to which the mental condition was only a probative fact."

It clearly appearing that record ownership of the properties involved herein passed from Manuel C. Gallardo and the various companies in which he was interested long prior to the expropriations, made between 1935 and 1939 as aforesaid, claimant did not own or have any interest in any of the said properties at the time they were expropriated or otherwise interfered with by the Government of Mexico.

The claim is accordingly disallowed.

DECISION No. 27-E

AMC Docket No. 85. Claimant: Dr. E. B. Merchant. Amount claimed: Not stated. Award: disallowed.

This claim for an unstated amount is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

While no complete statement of the facts on which the claim is based has been submitted, it appears to be for the destruction of fences and houses and other losses occasioned by the alleged wrongful occupation of claimant's property consisting of 1,100 acres some four miles west of Mexicali, Northern District of Lower California, bordering on the international boundary, about the year 1932, under the so-called Idle Land Law of June 23, 1920.

Claimant has submitted no proof of his nationality other than his own affidavit that he was born in Yamhill County, Oregon, in 1873. He has submitted no proof of his ownership of the land on which were located the houses, fences and irrigating equipment which he alleges were destroyed or removed. He has submitted no evidence to establish the identity of the persons or authorities who caused the losses and damages of which he complains, nor the extent and amount of such losses and damages.

The record discloses no valid basis for an award and the claim is disallowed.

DECISION No. 124-E

AMC Docket No. 86. Claimant: Fred L. Morris, deceased. Amount claimed: \$129,149.00. Amount awarded: \$12,922.30.

This claim in the amount of \$129,149.00 is before this Commission pursuant to the provisions of section 4 of the Settlement of Mexican Claims Act of 1942, a claim having been filed with the Agrarian Claims Commission which it failed to appraise and a petition for review of such action having been granted.

This claim was originally filed with the Agrarian Claims Commission in the amount of \$250,000.00, based upon the alleged expropriation of a portion of Hacienda de Otinapa, located 25 miles west of the City of Durango in the State of Durango, and the alleged seizure of the balance of said Hacienda. In a supplemental affidavit of claim filed with said Commission by the attorney for claimant under date of May 31, 1940 the amount of the claim was increased to \$725,000.00. On November 7, 1946, said attorney filed a "Supplemental Memorandum" with this Commission. Therein the amount of the claim was reduced to \$129,149.00 and the claim itself was divided into two parts, as follows:

\$40,237.50 as compensation for the loss of use of Hacienda de Otinapa.

\$88,911.50 as the "full commercial value of—entire Hacienda de Otinapa of 58,000 hectares".

With respect to the first part of the claim set forth in said "Supplemental Memorandum", claimant alleged that:

"After the beginning of their wrongful Agrarian procedures against claimants properties" claimant had "suffered the defacto losses and damages of the beneficial uses (rents . . . and other income . . .) of the entire area of 58,000 hectares . . . from January 1, 1927, to February 24, 1933".

Claimant predicates this part of his claim on the fact that an agrarian petition was filed in 1921 on a portion of Hacienda Otinapa known as La Quesera which resulted in a Presidential Decree of expropriation of said portion in 1928 and that the said La Quesera was seized by said petitioners in 1921 and remained in their possession until officially taken over by the Mexican Government by expropriation in 1928. Claimant contends that said seizure and subsequent expropriation of said La Quesera caused widespread unrest among the agrarians, more especially among the tenants on said hacienda, to such an extent that he was unable to rent the remainder of his lands. To use the language of claimant, it

"interfered with all attempts of organized plans of operations and ruined his possibilities of operating to economic advantage these remaining ranchos of his big Hacienda de Otinapa".

This portion of claim appears to be based on the general effects of the Mexican Agrarian Laws, and on damages caused by "repercussions" arising from agrarian activities. This type of claim has already been rejected by this Commission. In the claim of Streeter Land Company, Series E, Decision No. 65, the Commission stated the rule as follows:

"Claim is also made for loss alleged to have been suffered by claimant as a result of reduction in market value of land owned by claimant but not expropriated. This claim is grounded on the proposition that the expropriation of certain of claimant's lands had the effect of reducing the market value of claimant's remaining unexpropriated lands because of the fear of future expropriations and on the attendant contention that the Mexican Government is liable to claimant for the reduction in market value of such unexpropriated lands.

Such claim is disallowed. This Commission cannot recognize as coming within its jurisdiction under the Settlement of Mexican Claims Act of 1942, as amended, any claim for any reduction which may have taken place in the market value of unexpropriated land based upon general repercussions produced by the Agrarian policy of Mexico".

With respect to the second portion of the claim set forth in the said Supplemental Memorandum of November 7, 1946, claimant alleged that the "wrongful, unjust, inequitable and unlawful interference with claimant's properties" by Mexican officials had rendered his property valueless long prior to February 25, 1933. Claim is accordingly made for the "full commercial value of his entire Hacienda de Otinapa of 58,000 hectares" which value he alleges to be \$88,911.50. This is based upon the valuation made in the appraisal of the aforesaid subdivision of *La Quesera* by the American Commissioner appointed pursuant to the protocol of April 24, 1934.

Subsequent to the expropriation of *La Quesera* other expropriations of lands contained in Hacienda de Otinapa were made as follows:

Governor's decree	Presidential decree	Temporal or tillable	Pasture	Total (hectares)
July 15, 1933.....	Feb. 26, 1934.....	189	540	729
None.....	Nov. 26, 1934.....	352	1,075	1,427
July 15, 1933.....	Nov. 26, 1934.....	424	1,040	1,464
None.....	Mar. 14, 1935.....	256	465	721
Nov. 26, 1934.....	Dec. 10, 1935.....	216	775	991
None.....	June 9, 1937.....	328	2,674	3,002
Jan. 14, 1937.....	Sept. 8, 1937.....	184	1,533	1,717
Dec. 24, 1936.....	Oct. 13, 1937.....	344	2,210	2,554
July 6, 1937.....	Oct. 13, 1937.....	240	1,364	1,604
Apr. 23, 1938.....	June 4, 1941.....	104	176	280
July 14, 1939.....	Oct. 7, 1942.....	412	1,098	1,510
Sept. 5, 1937.....	None.....	328	820	1,148
Sept. 28, 1937.....	None.....	20	2,130	2,150
		3,397	15,900	19,297

All the above Presidential Decrees ascribe ownership of Hacienda de Otinapa to the State of Durango or to R. Real and not to the claimant herein, it being stated in said decrees that the State had acquired the entire tract on December 19, 1933, on a delinquent tax sale and had thereafter resold the same to the said R. Real. Claimant alleges that R. Real was the brother of the then Governor of Durango and that the tax sale and subsequent conveyance to the Governor's brother is proof that the tax sale was illegal and constituted a "forceful seizure" of his property by Mexican authorities. However, according to claimant's own allegations he had paid no taxes on said property after July 1, 1932, he having discontinued such payments because he received no assurances that he would be permitted to keep the property even if the payments were made, also because the property was continually being threatened with agrarian expropriations.

There is nothing in this record which would justify a finding that the tax sale was in any way irregular or violative either of

Mexican law or of international law. In the absence of proof of such irregularity, the acts of the officials in effecting the sale are presumed to have been regular and are entitled to full faith and credit. Such a sale constitutes no wrongful interference with claimant's property and provides no valid basis for an award to him therefor. So holding, it is clear that none of the expropriations made after the date of the said tax sale can be made the basis of a valid claim.

We do find, however, that claimant is entitled to compensation for the lands affected by the two provisional decrees of the Governor dated July 15, 1933. These were issued some five months before the land was sold for taxes. They were both confirmed by Presidential Decrees at later dates. Provisional possession was delivered on July 26, 1933.

These decrees classified the lands affected by them as follows:

Village	Temporal	Grazing	Total (hectares)
San Juan de Los Pericos.....	189	540	729
La Quinta.....	424	1,040	1,464
	613	1,580	2,193

There is very little evidence in the record as to value. The fiscal valuation is not stated in either of the decrees. The appraisal of La Quesera, mentioned above, was based on a value of 40 pesos per hectare for temporal land, 8 pesos per hectare for grazing land, and an allowance of 1 peso per hectare as severance damages to the lands of said rancho which were not actually expropriated. We find such valuation to be appropriate. As stated above, said appraisal was adopted by claimant as basis for valuation of the remainder of the hacienda. Applying the same valuations here we obtain results as follows:

	Pesos
613 hectares at 40 pesos.....	24,520
1,580 hectares at 8 pesos.....	12,640
5,000 hectares at 1 peso (severance damage).....	5,000
Tótal	42,160

The rate of exchange in July 1933 was 3.25 x 1, and the above sum in pesos was equivalent to \$12,922.30.

An award to the Estate of Fred L. Morris is accordingly made in the sum of \$12,922.30, together with interest from July 26, 1933 as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 132-E

AMC Docket No. 87. Claimant: Arguello Heirs and Assignees (Rancho Tijuana). Amount claimed: \$9,000,000.00. Amount awarded: \$192,257.57.

This is a claim filed with this Commission for losses alleged to have been sustained by reason of a Presidential Decree dated November 7, 1929, nullifying an original grant of land in 1829 by the Mexican Government to one Santiago Arguello and because of a failure of the authorities of the Mexican Government to give effect to a decision of the Supreme Court of Mexico ren-

dered in 1938, declaring said nullification decree to be void. The property involved is located in Lower California adjoining the international boundary and was originally known as the Tijuana Ranch. Included in this property is the present town of Tijuana. The original tract of land was reputed to contain 10,533 hectares but a re-survey indicates that the property had a slightly larger area.

On several occasions after 1829 a renewal of the aforementioned grant was issued by the Government of Mexico. Santiago Arguello died in 1862 and his widow, Pilar Ortega Arguello, asked for confirmation of said grant after his death, which confirmation was issued about 1885 re-affirming the title of the property to Pilar Arguello and the heirs of Santiago Arguello.

The Department of Agriculture and Fomento in 1923 recognized that the title of this property was in the name of the Arguello family or their assignees.

In 1929 the President of Mexico issued a decree declaring the entire grant to be illegal from the date of its issuance and restoring the entire area of the ranch to the status of national lands.

A few of those deriving title through the original grant to Santiago Arguello brought an amparo action in the Mexican courts and in 1938, after the lapse of a considerable period of time, the Supreme Court of Mexico declared that the nullification order was void and that the title of the ranch rested in the Arguello family and those deriving title through them.

Prior to the rendition of said decision, certain leases and conveyances had been made by the Department of Agriculture. After the Supreme Court rendered its decision in 1938, as aforesaid, officials of such Department brought amparo suit in an effort to avoid the necessity for carrying out of the decree of the Mexican Supreme Court. This plea was rejected by the Mexican Supreme Court in about 1940. It appears, however, that the Executive Branch of the Mexican Government did not carry out the terms of the 1938 decree of the court restoring title to the Arguello family. An agreement was entered into between Mexican officials and certain of the plaintiffs in the original amparo suit, waiving certain rights of such parties to portions of the property. The agreement itself is not on file. Some of the parties to the suit did not agree to such settlement and most of the individuals who claimed interest in the property were not parties to that suit. However, in December of 1944 it appears that the property upon which was located the new race track and which comprised approximately 459 hectares of ground was actually returned and as far as can be ascertained by the record some additional land has been returned or is available for the co-owners to take possession thereof.

The land which was taken and which was not returned includes the following: Irrigation District No. 12, the land included in two expropriations under the agrarian laws which occurred in 1937 and 1938, the property known as Federal Zone which had been so declared under the decree of January 10, 1919 but which has not been clearly defined, and the property which had been incorporated in the Town of Tijuana. A small tract, presumably

about 243 hectares, had been taken over for a military school in about 1937 and this also was not returned.

Claimants herein, comprising 138 individuals and estates, have not agreed among themselves as to their interests. The following are those claimants who have alleged an interest in the property: Mary Camila de Anguisola; Alexander Arguello; Alfred Arguello; Jose Maria de Arguello; Lawrence Arguello; Robert E. Arguello; Thomas Arguello; Ismael Ventura Arnais; Robert E. Arguello, as trustee for unnamed child of Antonio Arguello; Concepcion H. Baker; Juan Bandini; Ralph Bandini; Lydia Adele Arguello de Beard; Eugenia Shaffer Beggs; Violet Braden; Teresa Brockway; Enrique de Buxton; Raymond de Buxton; Lawrence L. Cardwell; Lawrence Cardwell, as assignee of Augustine Vicente Zamorano; May A. Cardwell, Stephen William Cardwell; Virginia Arguello de Carrasco; Guadalupe Dalton Castro; Albert Henry Coutts; Charlotte Coutts (Lottie); Helen Dalton; Henry Augustin Dalton; Henry Francis Dalton; George Dalton, Eudora Dalton; Maria Antonia Dalton; Solomon Dalton; William C. Dalton; Trinidad Macias Dalton; Christina Johnson Dalton; Roger Philip Dalton; Fanny Wilcox Drake; Helen Cardwell Duncan; James Calhoun Drake; Natalie Augustina Dalton; Julia Winston Flowers; Charles A. Forbes, as assignee of Elena Moreno; Joseph J. Forbes, Administrator of estate of Charles H. Forbes; Estate of Luisa Olvera de Forbes; Carmen Arguello de Garcia; Eugene David Green; Isabel Stokes de Green; Joseph Robert Green; Lewis S. Green; Robert Green; William Ralph Green; Viola Benitez Gusman; Gerald Ross Hackleman; Marguerite Hackleman (nee Marguerite Hannon); Robert William Hackleman; Amada Hamilton, Administratrix of estate of Luis Kinard Hamilton, deceased; Dorothy E. Havens; Ynez Havens; Josephine Arguello de Halowell; Evangelina V. de Higuera; Earnest S. Howe; Ernest Howe; Howard E. Howe; James A. Howe; Maria Angela Jacoby; Marion Winston Jenkins; Rosara W. Jackson; Juliet Arguello de Keller; Marguerite Merrill de Leroy; Luisa Augustin Dalton Lewis; Maria Wilcox Longstreet; Carolina Winston Locrantz; Dora Loveless; Concepcion Arguello Lucero, as an individual; Concepcion Arguello Lucero, as Special Administratrix of estate of Jose Francisco Arguello; Frank R. Luckhardt, Executor of estate of Pilar Arguello de Luckhardt; Violet Kathleen MacKenzie; Katherine H. McCalman (formerly Katherine Drake); Daphne D. MacNeil; George Merrill; James Joseph Merrill; Robert Merrill; Matilda Mendelson; Tulita Wilcox Miner; Elena de Toro Moreno; representing successors in interest of Maria Olvera de Toro; Tonio Molina (Maria Augustina Zamorano Molina); Henrietta Dalton Munoz; Esperanza Stokes de Omarr; Anthony K. Plummer; John L. Plummer; Carlos Plummer; Catherine Mills Plummer; Gilbert Procter; John Machell Procter; Prenta Arguello de Redden; Marguerite R. Ries; Mary Guadalupe Dalton Rittenhouse; Christina Rose (Maria Christina Zamorano); Concepcion Rowe; Hortense Augustina Dalton Ronstadt; Lupe Augustina Dalton Ronstadt; Criselda Arguello de Salas; Alice Cardwell Salaun; Isabel Dalton Snook; Elizabeth Dolores Stevenson; Frank Walter Stevenson; Frank Walter Stevenson, Jr.;

Claudia May Stevenson; Rosa Serpa; Luisa Amavizca Smith; Sara Arguello de Smith; Aristides E. Stokes; Emma Jane Libby Stokes; Marcia H. Stowers; Title Insurance and Trust Company, Executor of Will of Alfred H. Wilcox; John de Toro; Jose Miguel de Toro; Mary Josephine Arguello de Vasquez; W. W. Wallace; B. R. Ware; Isabel Wilhelmina Weyse; Josephine M. Wheeler; Carolina Winston; James Wallace Winston; John B. Winston, Jr.; Louise B. Winston (Louise Winston Rivara); Marguerite Winston; William Lawrence Winston; Frank Alexander Wolfskill; Herbert Wolfskill; Julian Wolfskill; William Lewis Wolfskill; William Woodward; Augustin Vicente Zamorano; Frank Zamorano.

All claimants whose ownership of property in 1929 is shown by the record have established their nationality except Thomas Arguello and Juliet Arguello de Keller. The first named was born in Mexico and seeks to establish his American nationality by reason of having lived 24 years in the United States. The second was naturalized as a United States citizen after the claim accrued.

It is pertinent to note that certain persons having an interest in the property involved herein have not filed claims. Some of these are undoubtedly of Mexican nationality. A number of statements of claims have been filed. These have been amended and revised, and upon the whole the record is very unsatisfactory. The original allegation was to the effect that no dispute as to the title of the property had ever occurred prior to the nullification decree, and it was alleged that the title rested as it did after a partition agreement of 1889 to which we shall hereafter refer. Additional evidence has been filed at various times and this Commission has received evidence as late as possible in an endeavor to determine accurately the ownership of the property of the various interests involved. This has not been completely successful.

In 1870, some years subsequent to the death of the original grantee, one of his sons Jose Francisco Arguello conveyed his inheritance to one Ceasar Luckhardt, his son-in-law. Ceasar Luckhardt in turn conveyed such interest to his wife Pilar who was a descendant of the original grantee. Her estate has not been settled and the representative of such state is a claimant for the interest of the property alleged to have been vested in Pilar Luckhardt in her lifetime. Jose Francisco Arguello had twelve children. One of them, Concepcion Arguello Lucero, has filed a claim as special administratrix of her father's estate to recover his interest. It is the contention of those claiming through Ceasar Luckhardt that the conveyance in 1870 from said Jose Francisco Arguello to Ceasar Luckhardt conveyed not only the inheritance which Jose Francisco Arguello received from his father, Santiago, but also the inheritance which he expected to receive from his mother, Pilar Arguello, the widow of Santiago Arguello, who died many years after such conveyance.

The said Pilar Arguello actually conveyed an undivided three leagues of land to a son, Ignacio, who in turn conveyed one of said leagues to a brother-in-law, Augustin Olvero, and a one-half league to each of his sisters, Teresa Bandini and Refugio Bandini. This precipitated a litigation with reference to the terms of said

conveyance and a settlement was reached by the partition agreement of 1889. This agreement purported to settle finally the rights which all the children had in the property as a result either of inheritance or conveyances. What was known as the south part of the ranch and the west part of the townsite was set aside for Ignacio, Refugio, Teresa and the wife of Augustin Olvero, four of the nine children of Santiago and Pilar Arguello, or the heirs of such of said four children who were deceased. The north portion of the property, which was somewhat smaller in area than the southern part, along with the east part of the town, was set aside for the descendants of the remaining five other children, one of whom is designated as the Zamorano interest, the others being the heirs of Jose Antonio Arguello, Jose F. Arguello, Ramon Arguello and Santiago Emidio. In 1889 the owners of these last named five interests owning the north part of the ranch and the east part of the townsite, as aforesaid, entered into two partition agreements. One of these agreements divided the acreage in various tracts described by letters A to S, inclusive; the other agreement divided the various town blocks. Some of the claimants contend that such partition agreement of 1890 was void because all the parties interested in the property did not sign such agreement although it was approved by the Court. An examination of the record discloses that descendants of those who did not sign such agreement acquiesced therein, either by subsequently holding themselves out to be the sole owners of the respective tracts assigned to them, or by making conveyances of portions thereof. It appears therefore that the said claimants who were not parties to said two partition agreements of 1890 are estopped from asserting the invalidity thereof.

The Commission is unable to determine from the record with certainty the ownership of some of the property. No complete record of conveyances has been furnished. Instead, an index of conveyances has been submitted. There is some indication that the town property had been built upon and improved but the record does not establish who made these improvements. Tijuana was a town of considerable size in 1929 when the nullification decree was executed. There is some suggestion that perhaps the owners of the town property gave long-term leases and that the lessees improved such property and owned "rights of possession". In view of the uncertainty as to what portion of the title was retained by any of the heirs, the Commission is unable to make an award for any losses alleged to have been sustained in the original townsite.

John B. Bandini, the son of Teresa Bandini (Teresa Bandini being one of the four children who received the south part of the ranch and the west part of the townsite under said partition agreement of 1889), has filed a claim for his share of the south portion of the ranch, alleging his inheritance of the same. However, there is in the record an original deed in 1912 from said Juan B. Bandini conveying to one Procter all the interests which he had in the Tijuana Ranch or which he would thereafter acquire by inheritance, gift, purchase or in any other manner. The evidence submitted does not disclose whether such conveyance was ever

recorded. It is the conclusion of this Commission that, by such conveyance, Juan B. Bandini divested himself of any interest in the property.

Some of the claimants filed an apparently friendly suit in the Superior Court of Los Angeles County, California against other claimants asking a declaratory judgment as to the rights of the parties under the said partition deed of 1889 as affected by the decision of the Mexican Supreme Court in the amparo suit. The judgment of the court declared that each of the parties to the suit had a specified undivided fractional interest in the property. Said judgment, however, cannot be accepted by us as being determinative of the rights of all claimants. In the first place, the court was asked to consider only the title as shown by the partition deed of 1889. The two partition agreements of 1890, and more than 100 other conveyances of record were not mentioned in the petition. It appears therefore that the "declaratory judgment" in such action attempted to determine the rights of some of the parties who derived an interest by virtue of the partition deed of 1889 although all those having an interest by reason of such deed were not parties to the suit. Likewise, although said judgment purported to determine title by reason of the decision in the amparo suit, none of the parties to that suit were made parties to the said California action for a declaratory judgment. Moreover, the land whose title was thus partially determined was located in Mexico and not within the jurisdiction of such court. Under the circumstances, the said judgment can be accorded no weight by this Commission.

Because of the uncertainty as to ownership, this Commission specifically disallows all claims herein except such portions hereinafter specifically found to be subjects of award. This Commission makes no finding that any claimants are not the owners of the property alleged but merely that their ownership has not been established to its satisfaction and the disallowance of such items of claim is without prejudice.

In an endeavor to establish value for the property which has been lost the Commission has segregated the entire area for which awards may be made into various tracts hereinafter described. To consider first the south portion of the ranch, the Commission finds the land described as Irrigation District No. 12 comprises some 2,767 hectares of land affected by the decree of 1929 and which were never returned despite the mandate of the 1938 Supreme Court decision. Of this area it is clear that some of the land was not irrigable but the balance was subjected to irrigation. An expensive dam and irrigation system, according to claimants, were completed some years after the nullification decree of 1929. The value of the said irrigable land therefore must be fixed as of 1929 when it was merely seasonal land having a potential value as irrigated land. The Commission has determined that this land had an average value over the entire area of 100 pesos which would make its value in 1929, 278,700 pesos. The rate of exchange prevailing in November 1929 being (2.06 x 1) such value is fixed at \$134,320.00.

The portion of the ranch which may be described as the

southwest part being an irregular tract on the south and west borders of the ranch comprises an area of approximately 1,777 hectares. No evidence is furnished as to what use has ever been made of such land but it may have had some value as grazing land. This land has been returned to claimants, or is available to them, so that such item of claim must be limited to one for the loss of use of such property from November 7, 1929 to October 6, 1940, the last date being the limit of the jurisdiction of this Commission. It is estimated that the rental value of such land for that period of time would be 20 pesos per hectare or 35,540 pesos. At the rate of exchange prevailing such sum would amount to \$17,252.00.

The property comprising 243 hectares in the south part of the ranch, known as Agua Caliente, was according to the record conveyed to one General Rodriguez by the Executor of the Estate of Ignacio Arguello. This property was not returned to the Arguello family or the assignees but instead was taken over in 1937 as a military school. It cannot be determined from the record whether the title had not been alienated prior to the nullification decree of 1929 or prior to 1927, the date of the jurisdiction of this Commission over new claims. Consequently, no award therefor is made.

The balance of the tract immediately adjoining the military school to the south is estimated to contain approximately 459 hectares. It is on this property that the race track and other improvements were installed in 1929 and subsequent thereto. The operation of the race track has undoubtedly been profitable but its value for such purposes was created by the installation of the improvements and not by the title holders of such land. The property has been returned to at least some of the co-owners and while there is some reference in the record to a lawsuit involving the value of the improvements, details as to such suit, said to be now pending, have not been furnished the Commission. We hold that claimants having an interest in such area are not entitled to the value of property but are entitled only to damages for the loss of use of said property from November 7, 1929 to October 6, 1940. It is apparent that such value must be fixed on the basis of its agricultural use. There is no record of any improvement having been placed thereon by the claimants. The Commission estimates such loss of use for the period of time at 200 pesos per hectare, or a total of 99,800 pesos which, converted into United States currency amounts to \$44,556.00.

It appears that the tract known as Lot A in the north portion of the ranch was set aside to a Zamorano interest by the partition deed of 1890. The record indicates that all such tracts have been disposed of by said Zamorano interest prior to the nullification decrees and the assignees have not filed a claim with this Commission. Consequently, no award is made for that portion of the ranch.

Lot B comprises some 488 hectares of land. No information is furnished as to the use made of such property and although claimants have furnished some affidavits containing estimates as to value, they vary so greatly and give such little information

as to the character of the land that for the most part they are very unsatisfactory. From such knowledge as can be obtained from the record it appears that the land might be classed as farm land suitable for grazing and some of it capable of being tilled. This land could not be returned because practically all of it was taken by agrarian expropriations. This Commission considers its value in 1929 to have been 50 pesos per hectare, a total of 24,400 pesos which converted into United States currency at the proper rate of exchange amounts to \$11,042.00.

Those descendants of the original grantee or their assignees have presented no claim involving Lot C or Lot D.

It appears that Lot E comprises some 587.13 hectares. This property also has been returned to the owners, or is available to them so that this Commission may fix an award only for the loss of the use of such property from November 7, 1929 to October 6, 1940. This has been computed at 44,354 pesos which, converted into United States currency at the proper rate of exchange, was \$21,532.00.

Lot F comprising some 215 hectares also is or may be returned to the owners and an award therefor must be limited to loss of use, which has been computed by the Commission to be 4,300 pesos, or \$2,086.00.

The loss of use of Lot G presumably also returned, has been appraised, converted into dollars at \$1,824.00.

Lot H comprising some 34.94 hectares presumably has been returned to the owners. Consequently the Commission has fixed the value of the loss of use at 6,988 pesos, or \$3,396.00.

Lot I comprising 31.1 hectares is presumably also available to the owners. The Commission has fixed the loss of use at 6,220 pesos, or \$3,018.00.

Lot J comprising 30.4 hectares also is presumed to have been returned or to have been made available to the owners. Such loss of use is affixed at 6,080 pesos or \$2,950.00.

Lot K comprising 101 hectares also has been returned or is available to the owners according to the record and its loss of use for the period involved is affixed at 20,000 pesos, or \$8,204.00.

Lots L and M are not the subject of any claim before this Commission.

Lot N immediately adjoining the old town of Tijuana is considered to have had a considerable potential value. That property was included in the town of Tijuana and was not returned to the owners thereof. Its value as of 1929 is determined to be 72,000 pesos, or \$34,854.00.

Lots O, P, Q, R and S were according to the record alienated by all of the claimants or by their predecessors in interest. The records indicate various conveyances of said lots and that title thereto rested in the Zaragosa Investment Company in 1929. It has been the contention of at least some of the claimants herein that the recorded conveyances to Zaragosa Investment Company did not grant good title. Our view is to the contrary. The stockholders of said company filed a claim before this Commission (AMC Docket No. 138) and established ownership of said lots in said claim (Decision 129—Series E). The Commission

considers therefore that no claimant herein had any interest in such lots.

Upon the basis of the entire record the Commission concludes that the claimants to whom awards are made herein have shown that they or their respective predecessors in interest were, on November 7, 1929, the rightful owners of various portions and parcels of Tijuana ranch, outside of the townsite, or of undivided interests therein. The Commission finds that the fair and reasonable values of such parcels and interests on said date was \$192,257.57. No award is made for any part or portion of the townsite of Tijuana, formerly known as Zaragosa, and the awards herein shall in no way affect or prejudice any rights of such awardees to any portion of said townsite.

The Commission, therefore, awards the principal sum of \$192,257.57 to be divided among the various claimants as hereinafter listed. Each award shall bear interest according to section 7 of the Settlement of Mexican Claims Act of 1942 from November 7, 1929.

The following claimants assigned portions of their respective interests to W. W. Wallace and a substitute claim has been filed for the sum of such interests. The amounts set opposite their names are the amounts due them after deducting the value of such assignments and individual awards are accordingly made for such sums to each as follows:

Evangeline V. de Higuera.....	\$4,086.00
Mary Camilia de Anguisola.....	1,634.40
Esperanza Stokes de Omarr.....	1,634.40
Ernest Howe	544.80
Dora A. Loveless	217.92
Josephine M. Wheeler	217.92
Ernest S. Howe	217.92
James A. Howe	217.92
Howard E. Howe	217.92
Emma Libby Stokes	1,634.40
Robert Green	544.80
Joseph Robert Green	217.92
Eugene David Green	217.92
Lewis Stokes Green	217.92
William Ralph Green	217.92
Elizabeth Dolores Stevenson	48.42
Claudia Mary Stevenson	48.42
Frank Walter Stevenson, Jr.....	48.42
Frank Walter Stevenson	72.64
Jose Miguel de Toro	1,634.40
Teresa Brockway	1,634.40
Concepcion Rowe	1,634.40
Matilda Mendelson	544.80
Mary Angela Jacoby	544.80
Ralph Bandini	4,086.00
Violet Braden	5,448.00
William Woodard	583.71
Rosa Serpa	3,268.80
Jose Maria Arguello	3,268.80
John de Toro	544.80
Marion W. Jenkins	116.74
Rosario W. Jackson	116.74
Louise W. Rivarra	116.74
James Wallace Winston	116.74
William Lawrence Winston	116.74

Carolina Winston Lokrantz.....	\$194.53
Marguerite Winston	194.53
John B. Winston, Jr.	194.53
Carolina Winston	583.71
Julia Winston Flowers	583.71

The following named claimants have requested the Commission to fix attorney's fee for John L. Mace, which this Commission has fixed at 10%. The amount set after each name represents the award to such claimant after deduction of said fee:

Eugenia Shafer Beggs	\$828.02
Albert Coutts	4,542.93
Charlotte Coutts	4,542.93

The following named claimants are entitled to receive the amounts set opposite their names without any deductions being made for assignment or attorney's fee:

Charles A. Forbes (by assignment from Elena Moreno).....	\$817.20
Elena Moreno	2,451.00
Gilbert Procter	18,160.00
John Machell Procter.....	3,632.00
Estate of Luisa Olvera de Forbes.....	16,344.00
Elizabeth Stokes de Green	3,268.80
Sara Arguello de Smith	13,075.20
Title Insurance & Trust Co., Executor Alfred Henry Wilcox.....	7,797.67
Mary W. Longstreet	7,207.64
Tuleta Wilcox Miner	7,207.64
Daphne Drake McNeil	3,063.82
John L. Mace.....	1,101.52
W. W. Wallace	38,785.60
The heirs of Jose Francisco Arguello as their interests may appear.....	21,646.00

DECISION No. 44-E

AMC Docket No. 88. Claimant: Kuno Henry Merrem. Amount claimed: \$771.00. Amount awarded: \$771.00.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the expropriation of 56.24996 hectares of land which is the total area of Lot No. 11, situated in the original Ejidos of Xicotencatl, State of Tamaulipas, Mexico. The American nationality of claimant, his ownership of the land and its expropriation by Presidential decree of January 25, 1939, are duly established.

Claimant purchased the land in 1909 at a total cost of 1,542 pesos, equivalent at that time to \$771.00 which is the amount here claimed. Upon consideration of the entire record, the Commission finds that the land had a value of \$771.00 at the date of its expropriation.

An award is accordingly made to Kuno Henry Merrem for the sum of \$771.00, together with interest from January 25, 1939, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 60-E

AMC Docket No. 89. Claimant: Mary Smith Sharpton. Amount claimed: \$4,180.30. Amount awarded: \$2,450.50.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

It is based upon the expropriation of 373.20 hectares of land comprising a portion of Lot No. 14 (El Pujal), situated in the Municipality of Valles, State of San Luis Potosi, Mexico, under a Presidential Decree dated December 20, 1939.

An undivided one-half interest in said Lot No. 14 was adjudicated to claimant, an American citizen, on October 31, 1939, by the Court at San Luis Potosi, in liquidation of a claim held by her against the estate of Dr. George T. Sharpton, deceased, the former owner thereof. She was therefore the owner of 186.6 hectares of the area expropriated. The Presidential Decree described said area as pasture land with 30 percent tillable. In claimant's affidavit of claim dated March 20, 1942, it is alleged that Lot No. 14 contained 418:02:94 hectares, that it was all included in the expropriation, and that it had a value of \$20.00 per hectare. Claim was therefore made for the sum of \$4,180.30 for her one-half interest therein. Evidence as to the total area of Lot No. 14 is conflicting. However, there is no satisfactory evidence that more than the area designated in the decree, 373.20, was actually expropriated. The indemnity to which claimant is entitled must be computed on that basis.

In support of the values alleged by claimant there are submitted letters from three different persons who are familiar with that section of Mexico, in which they estimate the value of the land affected at from 100 pesos to 200 pesos per hectare. The National Highway from Laredo to Mexico City passes through said land.

On the basis of the record before us and of information obtained by the Commission on a personal inspection of the property, we find that on the date of expropriation the tillable land of claimant had a value of 100 pesos per hectare and that the pasture land a value of 50 pesos per hectare, computed as follows:

	Pesos
56.0 hectares tillable land at 100 pesos.....	5,600
130.6 hectares pasture land at 50 pesos.....	6,530
Total value	12,130

At the rate of exchange applicable at the date of expropriation (4 95 x 1) the aforesaid sum is equivalent to \$2,450.50.

An award is accordingly made to Mary Smith Sharpton for the sum of \$2,450.50, together with interest from December 20, 1939, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 110-E

AMC Docket No. 90. Claimant: Sinaloa Land and Water Company, Ltd.
Amount claimed: \$256,635.00. Amount awarded: \$32,211.11.

This claim in the sum of \$256,635.00 is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

It is predicated upon the alleged expropriation of numerous properties said to contain 256.635 acres of land located in various municipalities of the State of Sinaloa, Mexico. Legal title to all of said land was held by Sinaloa Land Company, S. A., a Mexican corporation of which claimant owns all the stock. An allotment in satisfactory form of all damages sustained has been submitted.

Claimant is a California corporation. Its nationality and beneficial ownership of the property involved have been established.

Twenty-eight separate items of claims are alleged. Items numbered 1, 3, 4 and 13 are based on the published petitions of the inhabitants of certain villages asking the Governor of the State to expropriate lands with which to endow said villages. The record fails to disclose that any action was ever taken on said petitions. There being no evidence of expropriation to support these items, they are disallowed.

Items numbered 2, 6, 11 and 12 were included in claims that were presented to and duly appraised by the American Commissioners appointed pursuant to the Protocol of April 24, 1934, and the Agrarian Claims Agreement of 1938. Claimant was duly notified of these appraisals as provided by section 4 (b) of the Settlement of Mexican Claims Act of 1942, but failed to give notice of intention to file a petition for the review of such appraisals. Awards were accordingly entered and certified to the Secretary of the Treasury as provided in section 4 (c) of said Act.

As to Item 5, claimant contends that the claim filed with this Commission should be construed as a petition for review of the appraisal of the Agrarian Claims Commission in so far as the same applies to the expropriation of 1,544 hectares (3,813 acres) from the tract of land known as "El Limon" or "Limontita", for the village of La Reforma by Presidential Decree of December 21, 1938. This contention is untenable. The Act of 1942 requires that notice of intention to file a petition for review shall be given within thirty days from the date the Commission has notified the claimant or his attorney of the appraisal so made. In this instance the notice of the appraisal was given on June 18, 1943, and the claim was not filed with this Commission until March 29, 1944.

Item 14 is for \$14,765.00 based upon the expropriation of 14,765 acres (5,978 hectares) from the property known as Bacubirito, situated in the District of Sinaloa. A claim for the loss of this entire tract was before the General Claims Commission based upon the petition of residents of a nearby village for an allotment of commons (Docket No. 3520). The appraisal of that claim by the American Commissioner states that provisional possession was delivered to such residents on August 10, 1929, and final possession on July 12, 1935. Claimant has not refuted the correctness of the Commissioner's finding. The dates of the losses thus established are not within the jurisdiction of this Commission. Claim for this loss could have been filed with the Agrarian Claims Commission but such claim was not filed.

Items of claim herein numbered 15 to 28, inclusive, aggregating \$176,628.00 are based on a Presidential Decree dated September 21, 1938, and published in Periodico Oficial of the State of Sinaloa, in several issues during the month of December 1939. This decree expropriated 2,626 hectares to the Settlement of El Fuerte, municipality of the same name, from the property of *San Jose de Ocolome*, owned by the Cia Agricola de de Constancia, C.L. No part of any property owned by claimant herein is affected by said decree. All items of this claim numbered 15 to 28, inclusive, are therefore without merit.

The Commission finds that there are only four items of claim which are meritorious. These are as follows:

<i>Item No.</i>	<i>Name of property</i>	<i>Hectares tillable</i>	<i>Hectares pasture and timber</i>	<i>Total hectares</i>
7	El Zapote.....	180	422	602
8	Tomo y Tachinolpa...	393	2,228	2,621
9	Conitaca.....	373	694	1,067
10	Baymuzari.....	676	1,879	2,555
		<u>1,622</u>	<u>5,223</u>	<u>6,845</u>

The record contains very meager evidence concerning the value of said lands. However, after careful consideration of such evidence as is submitted, as well as evidence in other claims involving similar land, the Commission finds that 50 pesos per hectare constitutes fair and reasonable compensation for the tillable land and that 15 pesos per hectare is a fair value for the timber and pasture lands at the dates of the expropriation thereof. Computed on this basis the expropriated property had a value of 159,445 pesos. The rate of exchange on the date of each expropriation was 4.95 x 1, and the above amount was equivalent to \$32,211.11.

An award is, accordingly, made to Sinaloa Land and Water Company, Ltd., in the sum of \$32,211.11 together with interest from dates of expropriation, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 75-E

AMC Docket No. 91. Claimant: Harriet Townner Smith. Amount claimed: \$15,620.00. Amount awarded: \$7,700.00.

This claim is based upon losses sustained by claimant as a result of repeated trespasses upon her property by agrarian trespassers and squatters, from 1927 through the year 1935. Claimant's property consisted of 600 acres of land located near the town of Altamira, State of Tamaulipas, Mexico.

Claimant, an American national, filed a claim before the Agrarian Claims Commission in 1939, in the amount of \$15,620.00 for similar losses occurring from 1909 through the year 1933, the items being \$7,700.00 for the net value of the land which was lost to claimant, and \$7,920.00 for improvements. No appraisal was made thereof because of lack of proof.

Claimant, now deceased, acquired said property by deed from one Van Ness D. Smith in 1909. The evidence shows that she made improvements upon the land and that she continued the citrus plantings which her predecessors in title had commenced. It was her intention to sell the land in five acre parcels. The record establishes the fact that there were approximately 30 acres of this land with matured, fully bearing citrus trees in 1927 and that other portions totaling 128 acres were in various stages of growth. Claimant had made improvements on the house. She had also purchased farm implements, mules, horses and wagons, and had placed some fencing on her property. It is further shown by the record that Mexican squatters and trespassers continually occupied portions of her land and interfered with her enjoyment

and use thereof and that the Mexican authorities refused and neglected to remove these squatters from her property though repeatedly requested to do so by claimant. On two occasions, one in 1929 and the other in 1934, the Mexican authorities did eject them upon the earnest solicitation of the Department of State of the United States Government but following each of such occasions the squatters and trespassers returned and again took possession of the land. For the remainder of the time, a period of several years, the Mexican Government did nothing toward remedying the condition or affording claimant any protection against the invasions of her land and despoliation of her property. As evidence of this, a communication dated June 16, 1933, from the American Consulate at Tampico, Mexico, to the United States Secretary of State, contains the following:

"However, due to the struggle of two contending political factions in the State, both of which are apparently playing up to or in any event, are loath to antagonize the radical agrarian element, two municipalities of the State in particular (Ocampo and Altamira) have become hot-beds of radicalism. It is believed that the governor, personally, is not partial to this radical element, but that he and his advisers have so far lacked the courage to take a firm stand against it, fearful of adverse political repercussion from the League of Agrarian Communities and the radical labor syndicates.

"The ordinary recourse for Mrs. Smith, of course, would be to take her case to the courts, but her agents inform me that, in their opinion, such action would not get results, and in addition, Mrs. Smith has no funds wherewith to finance legal action."

The futility of claimant's repeated appeals to the Mexican authorities, through the medium of her own government, for protection against trespassers on her property, appears to be a sufficient justification, under existing circumstances, for an award, without further efforts on claimant's part.

There is no evidence in the record to show the actual income derived from claimant's produce thereon. For this reason the Commission is unable to determine the amount or extent of damages, which claimant may have sustained by reason of the loss of use of her property.

Claimant was compelled to abandon her property in or about 1935. During that year she deeded the same to Alexander Smith for the nominal consideration of \$300.00. There is evidence of an offer to purchase her property for \$8,000.00, made shortly before the above-mentioned conveyance. That failed of consummation because of the threat of the prospective purchaser by the squatters when he sought to enter into possession. The Commission finds that the offer of \$8,000.00 represented the fair and reasonable value of the property and that the sum of \$300.00 actually received by claimant had no relation whatsoever to the value of the property. Said sum of \$300.00 should, however, be deducted from the sum of \$8,000.00, at which we evaluate the property. The damage thus sustained by claimant is \$7,700.00.

The Commission accordingly makes the following award: To the Estate of Harriet Towner Smith the principal sum of \$7,700.00, without interest.

DECISION No. 39-E

AMC Docket No. 92. Claimant: Raymond W. Smith. Amount claimed: \$2,000.00. Award: disallowed.

This is an agrarian claim based on the alleged expropriation of lands of El Coyol Plantation Company, an Illinois corporation, located in the State of Veracruz, Mexico. Claimant alleges that he is the owner of 20 shares of stock of said corporation for which he paid \$2,000.00. It was originally filed with the Agrarian Claims Commission, but no appraisal was made thereof because of lack of evidence. No claim is filed by the corporation itself.

This claim is clearly outside the jurisdiction of this Commission. It is based upon an alleged expropriation under three Presidential Resolutions. Although these Resolutions have not been furnished, they are described by claimant as follows:

1. Presidential Resolution of May 7, 1934, published in Gaceta Oficial of Veracruz of December 17, 1936, dotating 220 hectares to Poblado Mata Naranjo.

2. Presidential Resolution of April 2, 1934, published in Diario Oficial of July 31, 1934, dotating 525 hectares to Poblado Dos Caminos.

3. Presidential Resolution dated March 25, 1936 (published May 9, 1936) dotating 272 hectares to Poblado El Cuajilote.

The jurisdiction of this Commission over agrarian claims arising on the aforesaid dates is strictly limited to those described in section 3 (a) (2) of the Settlement of Mexican Claims Act of 1942, to wit:

"Agrarian claims which are predicated upon provisional expropriation decrees signed between August 31, 1927, and December 1, 1938, inclusive, but not published prior to December 1, 1938, and which were not filed with the Agrarian Claims Commission established pursuant to the agreement between the United States and Mexico effected by exchange of notes signed on November 9 and November 12, 1938, respectively (hereinafter referred to as the Agrarian Claims Agreement of 1938) :". . .

The instant claim is neither "predicated upon provisional expropriation decrees" nor is it one which was "not filed with the Agrarian Claims Commission."

Even if the within claim might be construed to be in the nature of a petition for review of the aforesaid action of the Agrarian Claims Commission under section 4 of the Settlement of Mexican Claims Act of 1942, we find nothing in the record before the Agrarian Claims Commission which would warrant an award to claimant. He established before said Commission no more than that he owned 20 shares of stock in the above-named corporation, representing an investment of \$2,000.00, and that the corporation's property was expropriated under the three Presidential Resolutions aforesaid. There is no proof in the record to sub-

stantiate the bare allegations as to the acquisition of the property by the said company, the amount paid by the company therefor or its value at the time of the expropriations. In reviewing an appraisal of the Agrarian Claims Commissioner under the aforesaid section 4 of the Act, we are required to decide the case "upon the basis of the record before the Commissioner at the time his appraisal in such case was made . . .".

It clearly appearing that we are without jurisdiction to consider this claim as a new one, namely, one coming within the purview of section 3 (a) (2) above cited, and that no proper claim was established before the Agrarian Claims Commission, it is ordered that this claim be dismissed.

DECISION No. 25-E

AMC Docket No. 94. Claimants: The Cove Investment and Improvement Company, The Stamford Manufacturing Company, The Stamford Manufacturing Company (in dissolution), The Stamford Extract Manufacturing Company, and of the stockholders and directors of said corporations, and of the Estate of Henry Kevlin, his heirs, next of kin, legatees, devisees, executors, administrators and assigns. Amount claimed: \$324,750.00. Award: disallowed.

This claim in the amount of \$324,750.00 is before the Commission pursuant to section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

A sworn statement of claim in the aforesaid amount has been filed with this Commission but no evidence has been submitted by the claimants in proof of citizenship, ownership of property or any interest therein, nor is there any proof of any wrongful acts by the Mexican Government or any of its authorities. The record discloses no valid basis for an award.

The claim is, therefore, disallowed.

DECISION No. 85-E

AMC Docket No. 95. Claimant: Streeter Land Company. Amount claimed: \$511,515.00. Amount awarded: \$22,469.38.

Claim is made in this case in the amount of \$511,515.00, and is predicated upon losses resulting from the alleged expropriation of 8,307 hectares of land situated in the District of Fuerte, State of Sinaloa, Mexico, under eight Presidential Decrees, one dated July 9, 1934, six dated September 21, 1938, and the last one dated December 9, 1938.

The American nationality of the claimant and the ownership of the land are proved.

Claimant acquired three tracts of land having a total area of 26,601 hectares. This property has been the subject of a number of Presidential Decrees of expropriation. One of these decrees dated July 9, 1934, and published October 13, 1934, expropriating an area of 568 hectares, is outside of the jurisdiction of the Commission.

The other decrees affecting the land of claimant are within the jurisdiction of the Commission under the rule laid down in the claim of Lewis Lamm (Decision 79—Series E). These decrees, together with the amount and classification of land thereby expropriated, are set forth as follows:

<i>Decree signed</i>	<i>Published in Diario Oficial</i>	<i>Tillable hectares</i>	<i>Pastoral hectares</i>
Sept. 21, 1938.....	Feb. 10, 1939.....	128	.....
Do.....	Do.....	155	.....
Do.....	Do.....	74	.....
Do.....	Feb. 13, 1939.....	226	1,600
Do.....	Feb. 14, 1939.....	.....	386
Do.....	Feb. 16, 1939.....	.....	632
Dec. 9, 1938.....	Not published.....	.....	1,682
			880
		583	5,180

Upon the question of value, claimant places a valuation of \$25.00 per hectare on land susceptible of cultivation, and \$2.50 per hectare on pasture land. This is approximately 125 pesos and 12.50 pesos per hectare, respectively, on the two classes of land. Based upon the record in this claim, the inspection of this land by the Commission, and the valuations determined by the Commission respecting similar property in the vicinity, the Commission considers a fair and just value for the expropriated land to be 100 pesos per hectare for tillable and 10 pesos per hectare for pastoral land.

The expropriation decrees classify the land as 583 hectares of tillable land and 5,180 hectares of pastoral land. In the affidavit of claim it is stated that 500 hectares of the land are pasture land and the balance consists of lands susceptible of cultivation. No satisfactory evidence is produced by claimant to show the character of the land. The Commission, therefore, considers the classifications stated in the expropriation decrees as being determinative.

The 583 hectares of tillable land are accordingly valued at 58,300 pesos and the 5,180 hectares of pastoral land at 51,800 pesos, or a total of 110,100 pesos. This amount converted at the rate of exchange (4.90×1) applicable at the time of the expropriations, is equivalent to the sum of \$22,469.38.

Claim is also made for loss alleged to have been suffered by claimant as a result of reduction in market value of land owned by claimant but not expropriated. This claim is grounded on the proposition that the expropriation of certain of claimant's lands had the effect of reducing the market value of claimant's remaining unexpropriated lands because of the fear of future expropriations and on the attendant contention that the Mexican Government is liable to claimant for the reduction in market value of such unexpropriated lands. Such claim is disallowed. This Commission cannot recognize as coming within its jurisdiction under the Settlement of Mexican Claims Act of 1942, as amended, any claim for any reduction which may have taken place in the market value of unexpropriated land based upon general repercussions produced by the Agrarian policy of Mexico.

Accordingly, claimant Streeter Land Company is awarded the principal sum of \$22,469.38 with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 38-E

AMC Docket No. 96. Claimant: Standard Fruit and Steamship Company. Amount claimed: \$94,000.00. Award: disallowed.

This is an agrarian claim in the amount of 470,000 pesos, based upon (1) the expropriation of 100 hectares of land belonging to Joseph Di Giorgio by a decree of the Municipality of Tuxtepec, State of Veracruz, Mexico, dated April 2, 1932, and (2) the expropriation of 370 hectares of land allegedly belonging to the Compania Frutera Standard de Mexico, a Mexican corporation, under a Presidential Decree dated November 12, 1941. A decree of the Governor of the State of Oaxaca with reference to this latter expropriation was issued on March 13, 1941. The claimant is allegedly the owner of all the stock of the Mexican company.

Both items of claim are clearly outside the jurisdiction of this Commission. The Mexican company did not acquire the property until July 15, 1932, which was subsequent to the date of the first expropriation. Thus there is no basis for the presentation of a claim by the American stockholders of said company. Moreover, this tract of land was included in the claim filed with the Agrarian Claims Commission (Docket No. 226) and was disallowed for lack of evidence. It was also included in claimant's petition to this Commission for review of the Agrarian Claims Commission's appraisal. This Commission granted a review but upon such review adhered to the action of Commissioner Lawson in disallowing claim for said item.

The jurisdiction of this Commission being limited to claims which arose not later than October 6, 1940, this Commission is powerless to pass upon the second item predicated upon an expropriation dated November 12, 1941.

The Commission, accordingly, holds that the claim is outside its jurisdiction and must therefore be disallowed.

DECISION No. 107-E

AMC Docket No. 97. Claimant: Victor R. Twist. Amount claimed: \$5,454.59. Amount awarded: \$5,454.59.

This is a claim in the amount of \$5,454.59 and is predicated upon the expropriation by a Governor's Decree dated August 26, 1940, of 50 hectares of land belonging to one Emilio Gastellum and situated near Culiacan, State of Sinaloa, Mexico. The property was conveyed by claimant to Gastellum in July 1934, the claimant retaining a mortgage thereon as security for the entire purchase price.

The record discloses that since the claim was filed Victor R. Twist died and that his widow, Elizabeth C. Twist, is his heir. Evidence has been submitted to establish in a satisfactory manner the American nationality of said Victor R. Twist at all times pertinent to this claim.

The record further discloses that on August 26, 1940, the Governor of the State of Sinaloa executed a decree of expropriation which took certain land belonging to the said Gastellum, possession being given September 24, 1940, and that 50 hectares of such land was the land which was covered by the aforementioned mortgage.

The mortgage provided that the land and crops raised thereon were to constitute the sole security for the payment of the purchase price and the interest thereon. Claimant, therefore, had no other method of collecting the debt against Gastellum. In accordance with the principles announced in the Steinkampf claim (Decision No. 48—Series C) the Commission finds that the claimant is entitled to an award by reason of such mortgage equal to the value of the expropriated land but not exceeding the amount due on the mortgage debt.

The claimant has submitted proof establishing that a balance is due on the mortgage debt in the amount of \$5,454.59.

Evidence has been submitted for the specific purpose of establishing the value of the property. From such evidence and from personal inspection of similar land in that section of Sinaloa, Mexico, the Commission is satisfied that the value of the land involved herein was greater than the amount due on the mortgage.

The claimant herein, the Estate of Victor R. Twist, deceased, is accordingly awarded the principal sum of \$5,454.59, with interest thereon from August 26, 1940, according to the provisions of Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 93-E

AMC Docket No. 98. Claimant: Victoria Fibre Plantation Company. Amount claimed: \$80,500.00. Amount awarded: \$3,949.30.

This is an agrarian claim based upon the expropriation of 701 hectares of land situated near the City of Victoria, State of Tamaulipas, Mexico, under a Presidential Decree dated July 8, 1936, and published October 2, 1936.

The claim was previously filed with the Agrarian Claims Commission, but the papers were twice returned to claimant by that Commission and no award was made for the reason that the Agrarian Claims Commission considered the evidence insufficient to justify an appraisal.

A claim predicated as this one is upon a Presidential Decree dated July 8, 1936, and published on October 2, 1936, does not come within any of the categories of agrarian claims which we are authorized to consider as new claims. However, upon an examination of the files of the Agrarian Claims Commission pertaining to this claim and the additional evidence submitted to this Commission, we conclude that this claim is properly within our purview under section 4 (a) (2) of the said Act, as a petition for review. It appears from the files of the Agrarian Claims Commission that the following papers were submitted to that Commission in support of this claim:

1. Affidavit of claim.
2. Baptismal certificate.
3. Tamaulipas Tax Receipt dated January 30, 1933.
4. Copy of Delaware Corporation annual report undated.
5. Summary translation of tax rates.
6. Simple typewritten copy of extract, from *Diario Oficial* of October 2, 1936.
7. Letter from Bernardo Zorrilla to Sladek dated November 18, 1936.

The foregoing evidence and the other evidence which we are authorized to receive as additional evidence establishes the American nationality of claimant and the expropriation of its property.

The Presidential Decree dated July 8, 1936, expropriated 701 hectares of claimant's land described therein as monte land susceptible of cultivation. From the evidence furnished and on the record in this claim, the Commission finds that a fair and just value for the expropriated land is 20 pesos per hectare or 14,020 pesos for the 701 hectares. This amount converted at the rate of exchange (3.55 x 1) applicable at the time of the Presidential Decree, July 8, 1936, is equivalent to \$3,949.30.

Claimant is, accordingly, awarded the sum of \$3,949.30 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from July 8, 1936.

DECISION No. 104-E

AMC Docket No. 100. Claimants: Anita Sutter Young, Baldwin Joseph Ignatius van Wolbeck, Ines Maria Bolanos, Carmen Manuela Estupinian, Virginia Consuelo Durand, Dolores Sutter Kason, John Sutter, Jr., Eugenia Sutter Friend, Reginald Sutter, Christine Sutter Kelly and Guadalupe Sierra Garcia by Anita Sutter Young, her Guardian and personal representative, Eugenia Sutter Friend as Administratrix of the Estate of Juan Sutter, also known as Juan Norbert Sutter, deceased, and Virginia Consuelo Durand as Administratrix of the Estate of Cristina Sutter van Wolbeck, also known as Cristina Sutter van Wolbeck, deceased. Amount claimed: \$306,651.50. Award: disallowed.

The land involved in this claim is a tract known as Los Organos and is situated near Acapulco in the State of Guerrero, Mexico. In the revised statement of claim, indemnification is asked for the alleged expropriation of 2,566 hectares, for the loss or destruction of certain improvements thereon and for loss of crops for a period of twelve years.

The record contains no evidence of expropriation of the above-mentioned 2,566 hectares nor of claimants' loss of title thereof. Claimants base their claim for indemnification on the contention that on October 15, 1929, an application for the use of vacant lands was made under the Idle Lands Law of Mexico; that this application was approved by the authorities and that thereupon Mexican citizens overran the entire area with the result that the foregoing losses or destruction of property occurred.

The evidence submitted consists of what appears to be a summary of the application for vacant land and the actions thereon certified by municipal officials. No actual copies of the proceedings are furnished. It appears from the summary that in compliance with the Idle Lands Law, certain property was found to be unused and that 53 hectares of the land belonging to claimants was set aside for the use of certain named Mexican citizens in one to two hectare tracts. Under the Idle Lands Law, these Mexicans were granted the use of the land for sustenance crops for one growing season.

Claimants contend that the granting of the afore-mentioned 53 hectares was the result of a wrongful application of the law. However no appeal was taken, although a quick and simple appeal to the courts is provided in the law itself. Claimants contend that after the granting of the application the Mexicans took over the

entire property and continued to hold possession, thus in effect expropriating the land. It is alleged that protests were made to the authorities in the form of petitions for redress. Copies of such petitions have not been furnished. Claimants have filed carbon copies of letters from an attorney to municipal authorities and the replies thereto. The text of such correspondence is vague. Although reference is made therein to petitions, there is nothing to indicate the subject matter of such petitions. The correspondence refers to petitions concerning land in districts other than that in which the land in question is located, and to petitions for "ejidos." Reference is made therein to Section 67 of the law. There is no Section 67 in the Idle Lands Law. Although we find such a section in the Agrarian Law, claimants have not established any expropriation thereunder, nor have claimants furnished information as to the rental value or the productivity of the property for more than ten years preceding the date the property is alleged to have been expropriated.

Proof of the destruction of the lime trees and of the buildings, and the loss of the livestock, as well as loss of possession, is not of a character to establish the liability of Mexico. Moreover it must be shown that the authorities could have protected the property and failed to do so after knowing of its danger, or that after such destruction by private parties said authorities failed to take steps to punish the offenders. This has not been shown.

If the land was in fact occupied by private parties without legal right to do so, as claimants allege, it is necessary, in order to establish liability, that claimants offer proof that the proper authorities refused to grant protection when asked. Claimants have not offered such proof. In this connection, the correspondence files show that Anita Sutter Young, one of the claimants herein, declined the services of the State Department in a letter dated October 4, 1932, to the United States Consul at Acapulco.

On the basis of the record the Commission concludes that claimants have not established the liability of Mexico for any losses suffered by them.

The claim is, therefore, disallowed.

DECISION No. 95-E

AMC Docket No. 101. Claimant: Viola Young. Amount claimed: \$7,150.00. Amount awarded: \$7,150.00.

This is a claim by Viola Young, Administratrix of the Estate of Frank Young, deceased, predicated upon the losses sustained by claimant's decedent as the result of the expropriation of 440 hectares of land under a Presidential Decree of February 23, 1938. Claimant alleges the value of such land to be \$4,400.00. In addition, she asks \$1,700.00 as severance damage to 340 hectares of other land, as a consequence of the expropriation, \$550.00 as the value of five and one-half miles of fence and \$500.00 for the loss of a well. The total claimed is \$7,150.00.

The Commission finds that the record establishes the nationality of claimant's decedent and of all his heirs, at the times pertinent to this claim. Claimant has also established the ownership of the lands involved herein.

The claim is one of those involving land in the Blalock Colony, State of Tamaulipas, Mexico. The history of such claims is discussed in the Vernie L. Medlin claim (Decision No. 91, Series E).

By the methods explained in the Medlin claim, above mentioned, the Commission finds that 440 hectares of land belonging to the claimant's decedent were expropriated by the Presidential Decree dated February 23, 1938. Claimant alleges that the first knowledge of the expropriation was obtained by herself and her decedent on June 10, 1940. This was the date when the above-mentioned claimant, Vernie L. Medlin, learned of the expropriation of his property, which adjoined that of claimant's decedent. For the reasons set forth in the Lamm claim (Decision No. 79, Series E), the Commission holds that this claim arose within the meaning of the Settlement of Mexican Claims Act of 1942, on June 10, 1940.

The Commission finds that the aforesaid items of claim are amply supported by the proof adduced and that claimant is entitled to an award in the sum of \$7,150.00, as claimed. Interest on such award must start as of the date the claim arose.

The claimant herein, Viola Young, Administratrix of the Estate of Frank Young, deceased, is accordingly awarded the principal sum of \$7,150.00 together with interest thereon from June 10, 1940, under provisions of section 7 of the Act.

DECISION No. 50-E

AMC Docket No. 102. Claimant: Eleanor Pratt Howard Burt. Amount claimed: \$1,184,836.16. Amount awarded: \$4,056.34.

This claim is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

It is based upon the expropriation of certain property which contained certain so-called "tequesquite" deposits (alkaline sodium salts) located on a portion of the property known as Hacienda San Jose de Gracia, situated about 80 miles southwest of the City of Guadalajara, State of Jalisco, Mexico.

The expropriation was effected by the official act of the Department of Agriculture and Fomento of the Government of Mexico on March 10, 1934, (Act No. 56, Act of Possession of Federal Lands) which recites that such action is taken pursuant to Article 27 of the Mexican Constitution and a Presidential Decree of June 6, 1925, also a decision of the Supreme Court dated October 25, 1933. The area expropriated is 3,191.22 hectares located within the boundaries of said hacienda.

The tract in question was acquired under a mortgage foreclosure sale on or about September 10, 1932, by a Mexican partnership firm known as Jose de Luna, S. en C. for a consideration of approximately 15,000 pesos. Said partnership consisted of Jose de Luna and of the Mexican Corporation, Comercio e Industria, S. A. The partnership interests were divided as follows:

Jose de Luna, 4 percent, Comercio e Industria, S. A., 96 percent.

All of the stock of Comercio e Industria, S. A. has been owned by

claimant since its organization in 1932 and she has been allotted 96 percent of the alleged losses.

Claimant calculates damages at the rate of 10 cents per ton on the estimated tonnage of "tequesquite" on the said land, the total estimated damage being \$1,234,204.33, and she asserts an interest of 96 percent therein, or \$1,184,836.16.

The evidence submitted by claimant to establish the value of the deposits is not convincing. No proof is submitted that the deposits were capable of commercial development under the conditions existing in Mexico at the time of the expropriation, or that such development was economically feasible. In the absence of such proof, it is obvious that no award can be made for the alleged value of said "tequesquite" deposits.

Although claim is made only for the loss of the deposits, the Commission is of the opinion that the proof is sufficient to warrant an award for the surface value of the land taken. Such land is evaluated at 15,000 pesos, the consideration paid therefor. Claimant's 96 percent interest is 14,400 pesos, which converted at the rate of exchange (3.55×1) applicable at the time of the expropriation (March 10, 1934) is equivalent to the sum of \$4,056.34.

An award is accordingly made in favor of the claimant in the principal amount of \$4,056.34 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from March 10, 1934.

DECISION No. 26-E

AMC Docket No. 103. Claimant: Frank Shreve. Amount claimed: \$4,999.98. Award: disallowed.

This claim in the amount of \$4,999.98 is before the Commission under the provisions of section 3 of the Settlement of Mexican Claims Act of 1942. It is based on the alleged expropriation of 239.94 acres of land situated in the State of Oaxaca, Mexico.

No evidence as to the expropriation of the land owned by claimant has been furnished, the affidavit of claimant merely stating that he has reason to believe and does believe that his land has been taken over by the Republic of Mexico. Such evidence as has been furnished by claimant indicates that claimant has paid no taxes on the land since 1923; that the state authorities embargoed the land for nonpayment of taxes in 1943, and that in September, 1944, claimant was advised by said authorities that the land was offered for sale for nonpayment of taxes and that upon payment of delinquent taxes title would rest in said claimant.

The claim is, therefore, disallowed.

DECISION No. 89-E

AMC Docket No. 104. Claimant: Ada Campbell Townsend. Amount claimed: \$4,775.00. Amount awarded: \$3,204.00.

This is an agrarian claim in the amount of \$4,775.00, based upon the expropriation of certain properties of the Mexican Compania Agricola de Mocorito, S. A., of which the claimant was a stockholder.

It appears from the record that all the outstanding shares of stock of the said corporation, to-wit: 500 shares, were owned by four stockholders whose names and holdings are as follows:

	<i>Shares</i>
Herbert A. Wheeler	125
Fred F. Wheeler	125
Charles F. Van de Water	125
Dr. V. Ray Townsend	125

The expropriation of the properties of this corporation was effected by four Presidential Decrees dated July 9, 1935, July 21, 1937, April 27, 1938 and September 7, 1938. Claim for these expropriations was filed with the Agrarian Claims Commission on behalf of the first three named stockholders. No claim was filed on behalf of Dr. V. Ray Townsend.

The Agrarian Claims Commission appraised the entire property expropriated under the aforesaid four Decrees at \$19,101.00. Of this sum \$14,326.00 was allocated to the three claimants who had presented their claims as aforesaid. This entitled each one of them to the sum of \$4,745.00. No award was made on behalf of stockholder Dr. V. Ray Townsend, as no claim had been presented for his interest in the said corporation. The aforesaid appraisals were accepted by the three claimants to whom they were made, and this Commission certified them to the Treasury Department as awards pursuant to Section 4 (b) of the Settlement of Mexican Claims Act of 1942.

The instant claim is now asserted by the widow of stockholder Dr. V. Ray Townsend, deceased. She contends that the original filing of the claim with the Agrarian Claims Commission by some of the stockholders constitutes a constructive filing on behalf of all of the stockholders of the corporation, and that she was entitled to an award representing the one-fourth interest of her late husband in the said corporation. This contention seems to us to be without merit. The stockholders of the corporation who filed their claim with the Agrarian Claims Commission did so on their own behalf and not on behalf of the corporation. The appraisal of the Agrarian Claims Commission as to the value of the entire property was only an incident to the decision of the individual claims presented to that Commission. It did not imply that any portion thereof was to be paid to any individual stockholder who had not presented his claim.

We find from an examination of the record, however, that the decrees of expropriation dated April 27, 1938, and September 7, 1938, come within the jurisdiction of this Commission under the provisions of Section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. Both decrees being published subsequent to December 1, 1938, and a claim for losses thereunder not having been filed with the Agrarian Claims Commission by the within claimant, they come within our jurisdiction in line with our holding in the claim of Lewis Lamm (Decision No. 79—Series E).

The record indicates that the Agrarian Claims Commission appraised the property involved in the decree dated April 27, 1938, at \$7,903.00. The value of the property affected by the decree dated September 7, 1938, was fixed by said Commission at \$4,913.00. This makes a total sum of \$12,816.00. We find such estimate of the value of the property to be fair and reasonable, and the claimant having established a one-fourth interest in the corpora-

tion and in the property expropriated, she is entitled to one-fourth of the said sum of \$12,816.00, or \$3,204.00.

Accordingly, the Commission awards claimant **Ada Campbell Townsend** the principal sum of \$3,204.00 with interest from dates of expropriations.

DECISION No. 96-E

AMC Docket No. 105. Claimant: **Chester T. Ingram**. Amount claimed: \$6,683.60. Amount awarded: \$2,732.40

This is an agrarian claim in the amount of \$6,683.60, based upon the expropriation of certain properties of **La Colorada Land Company, S.A.**, a Mexican corporation, of which the claimant was a stockholder.

It appears from the record that the paid-up shares of stock of the said corporation, to-wit: 36,888 shares, were owned by five stockholders, whose names and holdings are as follows:

	<i>Shares</i>	<i>Percentum</i>
Edward Ingram	17,706	48
John F. Ingram	8,115	22
Harvey E. Abbott	7,378	20
Florence Abbott	738	2
John A. Donovan	2,951	8

The instant claimant acquired all of the stock of **John F. Ingram** in 1932. The expropriation of the properties of this corporation was effected by six Presidential Decrees dated November 19, 1934, September 10, 1935, July 1, 1936, July 8, 1936, and July 15, 1936, and September 21, 1938. Claim for these expropriations was filed with the Agrarian Claims Commission on behalf of **Harvey E. Abbott**, **Florence Abbott**, and the Estate of **Edward Ingram**. No claim was filed on behalf of **John F. Ingram** or **Chester T. Ingram**.

The Agrarian Claims Commission appraised the entire property expropriated under the first five decrees above mentioned at \$62,790.00. Of this sum 20 percentum was allocated to **Harvey E. Abbott**, 2 percentum to **Florence Abbott**, and 48 percentum to the Estate of **Edward Ingram**, the claimants who had presented their claims. The aforesaid appraisals were accepted by the three claimants to whom they were made, and this Commission certified them to the Treasury Department as awards pursuant to section 4 (b) of the Settlement of Mexican Claims Act of 1942. No award was made on behalf of stockholder **John F. Ingram**, or his successor **Chester T. Ingram**, as no claim had been presented for his interest in the said corporation.

The instant claim is now asserted by **Chester T. Ingram** who acquired stock of **John F. Ingram** as stated above. He contends that the original filing of the claim with the Agrarian Claims Commission by some of the stockholders constitutes a constructive filing on behalf of all of the stockholders of the corporation, and that he was entitled to an award representing his 22 percentum interest. This contention seems to us to be without merit. The stockholders of the corporation who filed their claim with the Agrarian Claims Commission did so on their own behalf and not on behalf of the corporation. The appraisal of the Agrarian Claims Commission as to the value of the entire property was

only an incident to the decision of the individual claims presented to that Commission. It did not imply that any portion thereof was to be paid to any individual stockholder who had not presented his claim.

We find from an examination of the record that the decree of expropriation was dated September 21, 1938, and published December 9, 1939, and that there is no indication that claimant knew of the existence of the expropriation decree prior to December 1, 1938. Claim for losses under said decree was not filed with the Agrarian Claims Commission by the within claimant. The instant claim therefore comes within our jurisdiction under the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942, in line with our holding in the claim of Lewis Lamm (Decision No. 79—Series E).

The record indicates that the Agrarian Claims Commission appraised the property involved in the decree of September 21, 1938, at \$12,420.00. We find such estimate of the value of the property to be fair and reasonable, and the claimant having established a 22 percentum interest in the corporation and in the property expropriated, is entitled to 22 percentum of the said sum of \$12,420.00, or \$2,732.40.

Accordingly, the Commission awards claimant Chester T. Ingram the principal sum of \$2,732.40, with interest from December 9, 1939.

DECISION No. 109-E

AMC Docket No. 106. Claimants: Andrea F. (Mrs. S. E.) Bayless, Ana Maria Fernandez (Mrs. W. R.) Johnson. Amount claimed: Not stated. Amount awarded: \$86,478.87.

This is an agrarian claim predicated upon the alleged expropriation of 1,184 hectares of land which was a portion of the hacienda known as "Las Rusias," situated in the Municipality of Matamoros, State of Tamaulipas, Mexico, by Presidential Decree dated March 26, 1935, published in *Diario Oficial* of August 29, 1939. Claim is also made for personal property damage and for wrongful occupation and interference with the remaining 351 hectares of said hacienda.

The ownership of the land and the nationality of the claimants are satisfactorily established. The loss of the 1,184 hectares is established by the aforesaid decree which is part of the record. As to the remaining 351 hectares which were not expropriated by formal decree, the proof establishes that this area was occupied by the Reclamation Service of the Mexican Government. Two large floodway levees were constructed by the Mexican authorities on either side thereof in the latter part of 1936 and the early part of 1937. In this way claimants were wholly deprived of the actual use and possession of said area.

An attempt was made to file this claim with the Agrarian Claims Commission prior to July 31, 1939, (that being the last date for such filing) but inasmuch as the decree of expropriation had not been published at that time claimants were unable to furnish said Commission with such evidence of the alleged losses as would bring the claim within the jurisdiction thereof. In accordance with the rule as to jurisdiction announced in the

Lamm claim (Decision No. 79—Series E) this Commission holds, in the foregoing circumstances, that this claim arose, within the meaning of the Settlement of Mexican Claims Act of 1942, on the date of publication, that is, August 29, 1939. The claim, therefore, comes within the provisions of section 3 (a) (3) of the aforesaid Act, and is within the jurisdiction of this Commission.

The property involved herein was acquired in 1903 by Juan H. Fernandez, the former husband of claimant Andrea F. (Mrs. S. E.) Bayless and father of the other claimant. He cleared the land and made extensive improvements including a large pumping plant which took water from the Rio Grande to irrigate some 650 hectares through a system of canals built for that purpose. The remainder of the land depended on the natural rainfall. The principal crops produced were cotton, rice and sugarcane. When Mr. Fernandez died in 1924, he devised a one-half interest in the property to his surviving widow and the other one-half to his three daughters. One of the daughters, Florentina, died on September 21, 1937, and another daughter, Andrea Justina, died on October 26, 1946. Both died intestate, unmarried and without issue, leaving as their only heirs their mother and sister who are the claimants herein. There is evidence that Las Rusias became the scene of serious agrarian troubles in 1926 and 1927 and that claimants suffered the loss of personal property and property damage, as well as the loss of use of parts or of all the lands of said hacienda prior to its expropriation in 1935. This evidence, however, does not establish the dates of any of such losses, the identity of the persons responsible therefor, or the exact nature and extent thereof. No award can therefore be made for said items of claim. As to the claim for the 1,535 hectares of land affected by expropriation decree or other action of the Mexican Government we have carefully considered the evidence as to the value of the land at the date of expropriation, as well as evidence in other claims involving similar land, and find that 200 pesos per hectare constitutes fair and reasonable compensation and that claimants are entitled to an award therefor. Computed at this rate the property had a value of 307,000 pesos, which converted into dollars at the rate of exchange prevailing at the date of the decree (3.55 x 1) amounts to \$86,478.87. The award should carry interest from August 29, 1939, the date when the claim arose.

An application having been made by L. R. Cowen of Brownsville, Texas, attorney for claimants, pursuant to section 5 (c) of the Act aforesaid, for the determination and apportionment by the Commission of his fees for services rendered with respect to this claim, which application is supported by written agreement for attorney's fees in the amount of 10 percentum of the award and the written consent of each of the claimants herein, joined by their respective husbands, the Commission finds upon the entire record that the amount requested for legal services is just and reasonable, and, accordingly, awards to L. R. Cowen 10 percentum of the aforesaid amount.

Awards to the claimants herein and to their attorney are accordingly made in the following amounts:

To Andrea F. (Mrs. S. E.) Bayless.....	\$53,508.80
To Ana Maria Fernandez (Mrs. W. R.) Johnson.....	24,322.19
To L. R. Cowen	8,647.88

each of said amounts to carry interest from August 29, 1939, under the provisions of section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 65-E

AMC Docket No. 107. Claimant: Walter Hewitt. Amount claimed: \$15,295.00. Amount awarded: \$8,000.00.

This claim in the amount of \$15,295.00 is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon loss of livestock and other personal property in the course of the so-called "Escobar" revolution during the spring of 1929. The history of this revolution and a statement of the principles of law applicable thereto are set forth in the decision of this Commission in the claim of *Jesse J. Simpson, et al.* (Series E—Decision 63). This Commission has determined that Mexico is not liable for the acts of rebel forces during the course of the "Escobar" revolution but that it is responsible for the acts of the Federal forces.

It is necessary, therefore, only to apply these established principles to the facts of the present case. The nationality of the claimant and his ownership of cattle, horses and personal property is established. The evidence in the record shows that both rebel and Federal forces crossed the claimant's ranch during the course of the "Escobar" revolution. These forces killed livestock and horses and carried away personal property belonging to the claimant. Items of claim for these losses are formulated as follows:

450 steers at \$30.....	\$13,500.00
33 saddle horses at \$40.....	1,320.00
Horsefeed	50.00
Groceries	75.00
Personal property	150.00
Damage to property	200.00
	\$15,295.00

The evidence as to the amount of damage inflicted by the federal and rebel forces, respectively, is conflicting and lacks definiteness. The difficulty of precise proof as to the allocation of the loss attributable, respectively, to acts of unsuccessful revolutionists and to those of federal troops is, however, recognized by the Commission. As above stated, the Government of Mexico is liable only for the damage committed by the federal forces. Upon a consideration of the record the Commission is of the opinion that a fair estimate of the losses caused by the said forces is \$8,000.00, and that claimant is entitled to indemnity therefor.

Accordingly, an award is made to Walter Hewitt in the sum of \$8,000.00, with interest from June 1, 1929.

DECISION No. 102-E

AMC Docket No. 108. Claimant: Susan W. Ingram. Amount claimed: \$44,400.00. Amount awarded: \$6,766.87.

This claim in the amount of \$44,400.00 is before the Commission pursuant to the provisions of section 3 (a) (3) and (4) of

the Settlement of Mexican Claims Act of 1942. It is predicated upon the expropriation of portions of claimant's land, upon the loss of use of a portion thereof, and upon the wrongful destruction and taking of valuable timber from still another portion.

The nationality of claimant and her ownership of two tracts of land in the State of Tamaulipas, Mexico, are established. One tract, known as *Porcion No. 9*, containing 494 hectares, was situated in the Municipality of Xicotencatl. The other, known as *El Maranjo*, containing 278.5611 hectares, was situated in the Municipality of Gomez Farias.

A Governor's Provisional Decree dated September 2, 1930, expropriated 18 hectares from *Porcion No. 9* to the town of Guerrero, Municipality of Xicotencatl. Said decree was confirmed by Presidential Decree dated December 11, 1931, which was published on March 16, 1932. No claim based upon this expropriation was filed with the Agrarian Claims Commission created by the Agreement of 1938. This Commission is, therefore, without jurisdiction to consider a claim for the loss resulting therefrom.

A Governor's Decree of August 29, 1930, provisionally expropriated 120 hectares from *El Naranjo* to the town of Ojo de Agua, Municipality of Gomez Farias. Provisional possession was delivered to the Agrarian inhabitants of said town shortly thereafter. However, a Presidential Decree of December 11, 1931, which was published in *Diario Oficial* of February 20, 1932, revoked the decree of the Governor in so far as it affected the 120 hectares belonging to claimant, and the local authorities were directed by said decree to restore to claimant the possession of said land. This the local authorities failed to do. That claimant repeatedly requested the Agrarian authorities to return possession of her land pursuant to said Presidential Decree, and that these requests were either denied or ignored, is clearly established by an exchange of letters between claimant and such authorities. The originals of many of these letters from the Mexican authorities addressed to claimant are part of the record in this claim. We hold that the failure of the Mexican authorities to execute the mandate of the President creates liability of the Mexican Government under international law and that claimant is entitled to compensation for the loss of use of said 120 hectares from August 29, 1930, to October 6, 1940. As to the rental value of said land, there is proof that 80 hectares had been cleared and placed in cultivation prior to 1930 and from the evidence in the record the Commission finds that \$300.00 per year is the reasonable rental value of said 120 hectares. Thus, claimant is entitled to an award of \$3,000.00 for the loss of use of such land from the time she was deprived of possession to October 6, 1940, the final date of jurisdiction of this Commission.

The evidence further establishes the exploitation by agrarians and other trespassers of the timber, particularly cedar, on 400 acres (160 hectares) of *El Naranjo* between the years 1930 and 1935. Protests by claimant to Mexican authorities against the despoliation of this timber were unavailing, and we conclude that the Mexican Government is liable for such loss. The record indicates that in 1930 there was an average of 50 cedar trees per

acre having diameters from 12 to 18 inches with trunks from 25 to 30 feet in height. While claim is made for the loss of the 400 acres (160 hectares) of timber land, the evidence in the record indicates that claimant has not lost title to said land. The Commission determines the damage caused by the cutting and taking away of the timber on said 400 acres from 1930 to 1935 to be \$5.00 per acre, or a total of \$2,000.00, and upon said sum claimant is entitled to interest from January 1, 1935.

The third item of claim is based upon a Presidential Decree dated August 28, 1940, published in *Diario Oficial* of October 15, 1940, expropriating from *El Naranjo* 87.56 hectares for amplification of the ejidos of the poblado of Ojo de Agua, Municipality of Gomez Farias. This land is described in the decree of expropriation as "monte laborable," indicating that it is wooded, forest, or brushy land suitable for cultivation when cleared. Evidence in the record establishes that this land, located near the Laredo-Mexico City highway, was very fertile river valley land with heavy growth of timber and brush. It appears to be of the same character as the tillable land involved in the claim of Mary Smith Sharpton (AMC Docket No. 89, Decision No. 60—Series E), which we evaluated at 100 pesos per hectare. The Commission, therefore, finds that said 87.56 hectares had a value of 100 pesos per hectare, or a total value of 8,756 pesos. At the rate of exchange prevailing at the date of expropriation, August 28, 1940, (4.95 x 1) said value was equivalent to \$1,766.87. Interest should be allowed from the latter date.

The claim before this Commission for damages to the 494 hectare tract known as *Porcion No. Nine* has been abandoned or waived. (See letter of E. F. Gates, Attorney for claimant, dated October 16, 1944). Such abandonment or waiver is without prejudice to the rights of claimant in and to said tract of land.

The total damages suffered by the claimant are thus computed as follows:

Loss of use of 120 hectares cultivated land, 10 years.....	\$3,000.00
Damage to timber on 160 hectares (400 acres).....	2,000.00
Value 87.56 hectares tillable land.....	1,766.87

Total 6,766.87

Claimant Susan W. Ingram is, accordingly, awarded the principal sum of \$6,766.87, with interest from dates of expropriations, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 103-E

AMC Docket No. 109. Claimant: Pine King Land and Lumber Company. Amount claimed: \$105,134.00. Amount awarded: \$60,075.00.

Claimant asks indemnification in the sum of \$105,134.00 for damages sustained by it as the result of the loss of title to 84,105 hectares of pine timber land in the State of Chihuahua, Mexico.

The record in a previous claim before this Commission (Pine King Land & Lumber Company, Decision No. 31, Series C) establishes the American nationality of the claimant at all times pertinent to this claim.

Claimant acquired by purchase sometime prior to 1911 some

209,111 hectares of pine timber land. On November 21, 1924, the President of Mexico issued a decree declaring null and void a certain grant of land which grant constituted the beginning of the chain of title through which claimant became the owner. The decree contained a provision, however, that those claiming title might have their title recognized on a proper showing that they were bona fide purchasers. The claimant challenging the right of the President to make such a decree instituted an amparo suit which finally came before the Supreme Court of Mexico on appeal. That court on November 12, 1925, granted a temporary order, restraining the President and other officials from carrying out such decree and from taking possession of the land pending the final determination of the legal questions involved. Following the issuance of the said order representatives of the company entered into negotiations with the Mexican authorities seeking an amicable settlement of the controversy, and as a result thereof entered into a contract on October 13, 1930, which recognized claimant's valid title to the entire tract of 209,111 hectares of land. The contract further provided that the owner of the land should subdivide and sell such land within three years.

The recognition, by means of the contract, of the validity of claimant's title to the land seemingly rendered unnecessary a decision by the Supreme Court on its merits of the appeal in the amparo action which had been pending undecided before that court for five years. Relying on the contract claimant dismissed such action. It also withdrew from consideration by the former General Claims Commission a previously filed claim predicated on the alleged illegal nullification of the title of the entire tract.

On April 29, 1933, the Department of Agriculture and Fomento of the Mexican Government notified claimant for the first time that 125,006 hectares of said land had been expropriated under a Presidential Decree in 1929 and stated that the department "considers that the aforesaid contract is null and void, insofar as the area of 125,006 hectares is concerned." Claimant was requested to appear voluntarily and to modify the contract so as to limit the area therein to 84,105 hectares.

Claimant, apparently, did not acquiesce in the proposed modification but instead endeavored to have other land substituted for the said 125,006 hectares. It continued to pay taxes on said land until 1938.

It was not until November 4, 1943, that the Department of Agriculture and Fomento of the Mexican Government notified claimant that claimant had lost title to the land because of failure to comply with the conditions of the contract of October 13, 1930, within the three year period fixed therein.

It seems clear that Mexico by virtue of the 1930 contract recognized that the title to the property was in claimant. Such title was also recognized by the terms of the expropriation decree of 1929, by the letter of April 29, 1933, and at least tacitly by the letter of November 4, 1943. At no time did Mexico take any action which would indicate that the title had been lost by reason of the original nullification decree in 1924. It is apparent that in dismissing the claim before the General Claims Commission and in

dismissing the amparo suit claimant relied on the contract of October 13, 1931. When Mexico indicated to claimant in 1933 that it was unable to carry out the terms thereof because of the 1929 expropriation, the claim could not be reinstated with the General Claims Commission because of the limitation of time granted to file claims. Claimant could not, therefore, be placed in status quo.

Since Mexico has recognized that title to the 84,105 hectares of land rested in the claimant until October 13, 1933, (the expiration date granted to claimant for divesting it of title), this Commission holds that the loss of title occurred on that date and that the claim is within its jurisdiction under section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It may be noted here that an award to claimant under the 1929 expropriation of the 125,006 hectares was made by this Commission in Decision No. 31, Series C.

Upon the question of value, the Commission finds that two and one-half pesos per hectare, the sum awarded for similar land in Decision No. 31, Series C, aforementioned, is fair and reasonable. On said basis the 84,105 hectares of land had a valuation of 210,-262.50 pesos, which at the rate of exchange applicable on October 13, 1933, (3.50 x 1) amounts to \$60,075.00.

The claimant herein, Pine King Land and Lumber Company, is accordingly awarded the principal sum of \$60,075.00, with interest from October 13, 1933, according to the provisions of section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 81-E

AMC Docket No. 110. Claimant: J. P. S. Mennet. Amount claimed: \$10,000.00. Amount awarded: \$1,613.90.

The claimant herein asks indemnity in the amount of \$10,000.00 which is alleged to be the purchase price and cost of improvements for a tract of land consisting of 3,900 hectares of land situated in the Municipality of Hidalgo, State of Tamaulipas, Mexico, and of which it is alleged that 2,757.6 hectares (after correcting computation errors in the statement of claim) have been expropriated.

Evidence has been submitted to establish that claimant is a national of the United States.

The claimant, J. P. S. Mennet and a Mexican citizen named Doctor Macedonia Garcia Perez, formed a Mexican commercial company under the name of "J. P. S. Mennet, Sociedad en Comandita," which purchased in 1923 the property described above. The claimant furnished 99.5 percent of the capital and the Mexican citizen furnished 0.5 percent and it was agreed that the assets and earnings should be divided in the same proportion.

A document dated March 15, 1945, has been filed as evidence that purports to be an assignment in the consideration of 1,000 pesos by the claimant on behalf of the company, to himself, as an individual, of all the rights derived from the loss of the property. On such record it is apparent that the 0.5 percent of the claim has not been continuously owned by a national of the United States, and that any award to claimant must, therefore, be limited to 99.5 percent of the value of the loss to the company.

The claimant alleges that the purchase price of the property was \$5,000.00 and that a like amount was expended on improvements such as buildings, fences, a deep well and similar items. It is further alleged that although claimant resided on the property for several years, no income was ever derived from the property since expropriations or the threat thereof prevented claimant from completing the improvements. Claimant apparently did not pay taxes for 1937 or subsequent years and abandoned the property.

Claimant alleges that a Presidential Decree dated July 1, 1936 and published in the *Diario Oficial* on December 2, 1936 expropriated 66.8 hectares of land. No claim for such item was filed with the Agrarian Claims Commission. Such expropriations do not come within the jurisdiction of this Commission.

Claimant further alleges that a Presidential Decree dated February 23, 1938, and published April 13, 1940, expropriated 141 hectares of land. For the reasons set forth in the Lamm claim (Decision No. 79, Series E), this item of claim arose within the meaning of the Act on April 13, 1940, from which date claimant shall receive interest. The valuation of the property shall be fixed as of the date of the Presidential Decree.

The claimant alleges further loss by reason of a Presidential Decree dated January 24, 1940 which expropriated 480.8 hectares of land, which item of loss is clearly within the jurisdiction of the Commission.

An additional item of claim for the loss of 509 hectares of land is based on a gubernatorial decree dated February 5, 1941. This Commission is given no jurisdiction to determine claims which arose subsequent to October 6, 1940. This item of claim, therefore, cannot be determined by this Commission, but such holding shall not be a bar to any other remedy the claimant may have now or in the future.

The claimant has made the statement that he also suffered the loss of 1,000 hectares in 1937 and of 560 hectares in 1943. No explanation of such losses is offered by claimant, except the statement that such losses were due to expropriations by the Treasury of the State of Tamaulipas. There is some indication that such losses may have been due to foreclosure for nonpayment of taxes. Without further explanation and proof of such losses, this Commission can make no award for such items of claim.

Aside from the allegation as to the cost of improvements and the purchase price of the property, claimant has furnished evidence that the property was valued at slightly more than 5,000 pesos for taxation purposes and it is alleged that ten hectares could be irrigated because a stream of water on the property and the well would produce enough water for such purpose and that the balance of the property had a stand of post-oak timber.

In the absence of more specific information as to value, and based on information in the record and in the files of other claims for lands of similar character in that State, it would appear fair and reasonable that this Commission fix the value of the land that is capable of being cultivated at 100 pesos per hectare and that

the pasture and woodland be considered as worth 10 pesos per hectare.

Based on such values, the losses sustained by claimant, for which this Commission may make compensation may be computed as follows:

Decree of February 23, 1938:	Pesos
10 hectares at 100 pesos.....	1,000
131 hectares at 10 pesos.....	1,310
	2,310

This amount computed into dollars at the rate of exchange on that date (3.55 x 1) would be \$650.70.

Decree of January 24, 1940:	Pesos
480.8 hectares at 10 pesos	4,808

This amount computed into dollars at the rate of exchange on that date (4.95 x 1) would be \$971.31.

The total losses sustained by the company by virtue of such losses would therefore amount to \$1,622.01, of which amount claimant would be entitled to 99.5 percent or \$1,613.90.

The claimant, J. P. S. Mennet, is therefore awarded the principal sum of \$1,613.90, with interest from dates of expropriations.

DECISION No. 78-E

AMC Docket No. 111. Claimant: Peter K. Lemmon, Jr. Amount claimed: \$26,627.50. Award: disallowed.

Claim is made in this case for the loss of use of claimant's property consisting of 870 acres located near the town of Colonia Diaz in the northern part of Chihuahua, Mexico, from January 1, 1927, to October 6, 1940, because of the alleged failure of the Mexican Government to provide protection against squatters who had been occupying said land.

Claimant is an American national and the owner of the property herein involved.

Claimant was one of several Mormons who settled in Colonia Diaz in or about 1890. They were driven from this colony about 1912, during the revolutionary disturbances in Mexico. A claim was filed with the Special Mexican Claims Commission for the losses caused by the revolutionists, and an award was made therein for loss of use for half of the 8-year period, from 1912 to 1920. The holding of that Commission was that during half of the said 8-year period, claimant had not been deprived of the use of his property through any action for which Mexico was liable under the Convention of September 10, 1923.

The facts in this case concerning the liability of Mexico are substantially the same as those in the claim of Estate of Moses M. Sanders and Martin F. Sanders (Decision No. —, Series E). On the basis of that decision and an examination of the record in this claim, it is the opinion of the Commission that claimant has not established liability of the Mexican Government.

Accordingly, this claim is disallowed.

DECISION No. 97-E

AMC Docket No. 112. Claimant: John A. Donovan. Amount claimed: \$2,430.40. Amount awarded: \$993.60.

This is an agrarian claim in the amount of \$2,430.40, based upon the expropriation of certain properties of La Colorada Land Company, S. A., a Mexican corporation, of which the claimant's decedent was a stockholder.

It appears from the record that the paid-up shares of stock of the said corporation, to wit: 36,888 shares, were owned by five stockholders, whose names and holdings are as follows:

	Shares	Percentum
Edward Ingram	17,706	48
John F. Ingram	8,115	22
Harvey E. Abbott	7,378	20
Florence Abbott	738	2
John A. Donovan	2,951	8

The expropriation of the properties of this corporation was effected by six Presidential Decrees dated November 19, 1934, September 10, 1935, July 1, 1936, July 15, 1936, July 8, 1936, and September 21, 1938. Claims under the first five expropriations were filed with the Agrarian Claims Commission on behalf of Harvey E. Abbott, Florence Abbott, and the Estate of Edward Ingram. No claim was filed on behalf of John A. Donovan.

The Agrarian Claims Commission appraised the entire property expropriated under the first five decrees above mentioned at \$62,790.00. Of this sum 20 per centum was allocated to Harvey E. Abbott, 2 per centum to Florence Abbott, and 48 per centum to the Estate of Edward Ingram, the claimants who had presented their claims. The aforesaid appraisals were accepted by the three claimants to whom they were made, and this Commission certified them to the Treasury Department as awards pursuant to section 4 (b) of the Settlement of Mexican Claims Act of 1942. No award was made on behalf of stockholder John A. Donovan as no claim had been presented for his interest in the said corporation.

The instant claim is now asserted by the Administratrix of the Estate of stockholder John A. Donovan, deceased. She contends that the original filing of the claim with the Agrarian Claims Commission by some of the stockholders constitutes a constructive filing on behalf of all of the stockholders of the corporation, and that she was entitled to an award representing the 8 per centum interest of her decedent in the said corporation. This contention seems to us to be without merit. The stockholders of the corporation who filed their claims with the Agrarian Claims Commission did so on their own behalf and not on behalf of the corporation. The appraisal of the Agrarian Claims Commission as to the value of the entire property was only an incident to the decision of the individual claims presented to that Commission. It did not imply that any portion thereof was to be paid to any individual stockholder who had not presented his claim.

The sixth decree of expropriation dated September 21, 1938, was not published until December 9, 1939. There is no indication that claimant knew of the existence of said decree prior to the date of its publication. Claim for losses under said decree was not filed with the Agrarian Claims Commission by the within claimant, although other stockholders of said corporation filed claims for their losses. The instant claim is within our jurisdiction under

the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942, in line with our holding in the claim of Lewis Lamm (Decision No. 79, Series E).

The record indicates that the Agrarian Claims Commission appraised the property involved in the decree of September 21, 1938, at \$12,420.00. We find such estimate of the value of the property to be fair and reasonable, and the claimant having established an 8 per centum interest in the corporation and in the property expropriated, is entitled to 8 per centum of the said sum of \$12,420.00 or \$993.60.

Accordingly, claimant Rebecca E. Donovan, as Administratrix of the Estate of John A. Donovan, is awarded the principal sum of \$993.60 with interest from December 9, 1939.

DECISION No. 40-E

AMC Docket No. 113. Claimant: Maria L. de Hernandez. Amount claimed: \$40,000.00. Award: disallowed.

This claim in the amount of \$40,000.00 is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon alleged losses sustained by claimant's deceased husband as a result of the destruction by the so-called *cristera* rebels of a drug store in the City of Valparaiso, State of Zacatecas, Mexico, in January, 1928. Claimant has furnished some evidence with respect to her American nationality and the destruction of personal property by the rebels. In an affidavit submitted by claimant there is set forth an estimate of her losses, but no further evidence has been furnished with respect to the value of the property involved.

The record is devoid of any evidence tending to show that the Mexican Government was not diligent in the protection of the property, in preventing damages to it, or in suppressing the rebels. In these circumstances, the application of the rule of international law that a government is not liable for the acts of unsuccessful revolutionists leads to the determination that the Mexican Government is not liable for the alleged damages to the claimant.

The Commission, therefore, holds that the claim must be disallowed.

DECISION No. 49-E

AMC Docket No. 114. Claimant: Estate of M. L. Gruwell. Amount claimed: \$38,394.36. Award: disallowed.

This claim in the amount of 136,300 pesos is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

It is based upon the alleged loss of real and personal property belonging to M. L. Gruwell and situated in Colonia Diaz, Municipality of Ascension, State of Chihuahua, Mexico. It is alleged that on or about July 27, 1912, his real estate and personal property were seized by agrarian squatters and that they have remained in possession of the property since that time. The claim is filed by Aaron Gruwell, a son of Mr. M. L. Gruwell, on behalf of himself and of the other heirs of the said M. L. Gruwell.

The American nationality of Aaron Gruwell is established but there is an absence of proof of American nationality of any of the other heirs. There is also no evidence as to the ownership of the land by M. L. Gruwell. Moreover, there is no showing that at any time within the jurisdiction of this Commission, to wit, between January 1, 1927 and October 6, 1940, inclusive, the protection of Mexican authorities against said squatters was sought by or on behalf of claimant and refused or withheld by the Mexican Government. In the absence of such a showing the Mexican Government would have no responsibility, upon which this Commission might base an award, for any damage suffered by claimant as a result of the acts complained of on the part of the said squatters.

The claim for loss of personal property seized in 1912 cannot be considered, this Commission having no jurisdiction over claims of this nature arising prior to January 1, 1927.

Accordingly, this Commission holds that the claim must be disallowed.

DECISION No. 90-E

AMC Docket No. 115. Claimant: Donald M. Street. Amount claimed: \$14,754.31. Amount awarded: \$5,917.76.

This claim, in the amount of \$14,754.31, is predicated upon losses sustained by reason of the expropriation of 188 hectares of land, comprising a part of the hacienda de Santa Lucia, belonging to claimant, and situate in the State of Puebla, Mexico.

Claimant has referred to evidence filed with the Agrarian Claims Commission in connection with a claim for other lands forming a part of said hacienda, to prove his nationality, the ownership of the property and its value. The Commission finds that such evidence is sufficient to establish the American nationality of the claimant at all times pertinent to this claim, and that claimant was the owner of the property in question.

The property which is the subject matter of this claim was taken by reason of a Presidential Decree dated December 23, 1926, and published in the *Diario Oficial* of May 13, 1927. It was not filed with the General Claims Commission or with the Agrarian Claims Commission. Claimant contends that this item falls within the category of claims provided for by Section 3 (a) (1), and also Section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942.

The claim does not fall within the last mentioned paragraph, since the text of the Act clearly indicates that such section refers to claims other than Agrarian claims. Claimant had no knowledge of the expropriation prior to the publication thereof. Such publication on May 13, 1927 was constructive notice of the expropriation and for the reasons set forth in the Lamm claim (Decision No. 79—Series E) this Commission holds that this item of claim arose on that date. It is therefore within the jurisdiction of this Commission as a claim comprehended within the provisions of Section 3 (a) (1) of the Act, which provides that the Commission shall determine:

“Agrarian Claims which arose between January 1, 1927

and August 30, 1927, inclusive, and which were not filed with the General Claims Commission . . ."

Following the rule in the Lamm case, above cited, the value of the property shall be fixed as of the date of the Presidential Decree but interest on any award made shall run from the date when the claim arose.

The Commission has examined the evidence as to value and the appraisal of the Agrarian Claims Commission and finds that the values fixed in that appraisal for lands forming part of the same hacienda but not involved in this claim, are fair and just. The value of the 188 hectares expropriated in accordance with said appraisal is, therefore, fixed as follows:

	Pesos
45 hectares irrigated land at 250 pesos.....	11,250
143 hectares monte land at 10 pesos	1,430
	12,680

The sum of 12,680 pesos converted into dollars at the rate of exchange prevailing on December 23, 1926 ($\$0.4667 \times 1$) amounts to \$5,917.76.

The claimant herein, Donald M. Street, is therefore awarded the principal sum of \$5,917.76, with interest from May 13, 1927.

DECISION No. 61-E

AMC Docket No. 116. Claimant: American stockholders of the International Investment Company, S. A., and American stockholders of El Tornillal Land Company, S. A. Amount claimed: \$735,500.00. Amount awarded: \$277,102.50.

This is an agrarian claim which is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is based upon the expropriation of the land of the International Investment Company, S. A., and El Tornillal Land Company, S. A., located on the Bosque de Cordova or Isle de Cordova, in the Municipality of Juarez, State of Chihuahua, Mexico. The International Investment Company, S. A. makes claim for the loss of 260.76 acres, and El Tornillal Land Company, S. A. for 112.73 acres. These lands were expropriated for reasons of public utility by a Presidential Decree dated September 19, 1939, and published in the Diario Oficial of October 18, 1939.

The nationality of the claimants at all times relevant to the claim is established. The ownership of 112.73 acres of land by El Tornillal Land Company, S. A. is established.

The ownership of the land of International Investment Company, S. A. is established, but there is a conflict in the evidence as to the exact amount of such land. In 1908, Jose A. Samaniego acquired title to 97.2 hectares, or approximately 240 acres. In 1910 he conveyed this land to the International Investment Company, S. A., which held title to it until it was expropriated in 1939. This land was located on the downstream end of the Isle de Cordova and its boundary for a considerable distance was the Rio Grande River. Owing to changes in the course of this river over a period of years, considerable accretions have been made in the amount of land. In an affidavit dated September 19, 1945, by S. A. Colwell, a surveyor licensed by the State of Texas,

he stated that by measurements based upon the map of the International Boundary Commission (United States and Mexico) and the Ayarzagoytia map he computed the amount of the land of the International Investment Company, S. A., to be 260.76 acres. This represents an increase of approximately 20 acres over the amount received by Mr. Samaniego in 1908. In the opinion of this Commission the testimony of Mr. Colwell satisfactorily establishes the area of the land of the International Investment Company, S. A. in 1945. No evidence is offered as to the exact dates of the accretions. Over the entire period from 1908 to 1945 these accretions average approximately .54 acres per year. This sum multiplied by 31 years, the period of time from 1908 to 1939, results in a total accretion of 16.74 acres, which added to the amount of the original grant of 240 acres, makes a total of approximately 256.74 acres.

The Presidential Decree of expropriation described the land affected as 97.20 hectares of land of the International Investment Company, S. A., and 48.16 hectares of land of El Tornillal Land Company, S. A. The lands of these two companies, together with the land of one Flores, a Mexican national, constitute all the land on the Isle de Cordova. It seems clear from the decree that it was intended to expropriate all the land of the companies named; that the figure of 97.2 hectares for the International Investment Company was inserted because that was the description of the amount of its land in the last recorded conveyance thereof and that it was the intent of the decree to expropriate all of the land of said company, including any accretions since the time of the said conveyance.

It is an established principle of Mexican law that alluvial accretions to land bordering on rivers shall belong to the owner of the land. *Codigo Civil para el Distrito y Territorios Federales* (1928) *Articulo 908*. The State of Chihuahua in which the property in question is located has the same provision in its civil code. *Codigo Civil del Estado de Chihuahua* (1898 ed.) *Articulo 802*, (1941 ed.) *Articulo 846*. See also Wheless, *Compendium of the Laws of Mexico* 2d. ed. (1938) *Article 285*, p. 174.

It is also a general principle of municipal law in the United States that accretions to land belong to the owner.

In *Nebraska v. Iowa*, 143 U. S. 359, 12 S. Ct. 396, 36 L. Ed. 186, the court said:

"It is settled law, that when grants of land border on running water, and the banks are changed by that gradual process known as accretion, the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possessions may vary. In *New Orleans v. United States*, 10 Pet. 662, 717, this court said: 'The question is well settled at common law, that the person whose land is bounded by a stream of water which changes its course gradually, by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss by the same means which may add to his territory; and, as he is

without remedy for his loss in this way, he cannot be held accountable for his gain.' (See also *Jones v. Souland*, 24 How. 41; *Banks v. Ogden*, 2 Wall. 57; *Saulet v. Shepherd*, 4 Wall. 502; *St. Clair County v. Lovington*, 23 Wall. 46; *Jefferis v. East Omaha Land Co.*, 134 U. S. 178.)"

See also *Philadelphia Company v. Stimson*, Secretary of War, 223 U. S. 605 (1912); *People ex rel Burnham v. Jones, et al.*, 112 N. Y. 597, 20 N.E. 577 (1899); *Wyckoff v. Mayfield*, 130 Oregon 687 (1929); *Fitzpatrick v. Bernritter* 130 Kansas 356 (1930).

It is also a general rule of law that accretions to land pass to the grantee unless especially reserved. *People ex rel Burnham v. Jones, et al.*, 112 N. Y., 597, 20 N.E. 577 (1899); *Sharpe v. Womack* (Texas Court of Civil Appeals) 73 S.W. (2d) 1058 (1934); *Graham v. Knight* (Texas Court of Appeals) 240 S.W. 981 (1922).

This Commission is aware of no reason why the foregoing rule should not be made applicable as well to lands affected by decrees of expropriation. It, therefore, determines that the accretions to land of the International Investment Company, S. A. were expropriated by the Presidential Decree dated September 19, 1939.

Cordova Island is immediately adjacent to the City of El Paso, Texas. Claimants contend, therefore, that land on the island is more valuable than ordinary farming land because it could be used as urban real estate or for truck and garden farming. This land, despite its proximity to El Paso, Texas, is of course less valuable than it would be if it were actually located in the United States. A number of affidavits have been furnished by qualified real estate dealers and appraisers with respect to the value of the two tracts. Their opinions as to value vary from \$1,200.00 to \$1,500.00 an acre. The Commission considers that a fair and just value for the land expropriated is \$750.00 per acre. The total area expropriated consists of

	Acres
International Investment Company, S. A.....	256.74
El Tornillal Land Company, S. A.....	112.73
	369.47

The total value of said 369.47 acres, accordingly, is \$277,102.50, computed as follows: \$192,555.00 for the 256.74 acres; \$84,547.50 for the 112.73 acres.

On September 9, 1944, International Investment Company, S. A. executed an allotment of the losses for which claim is made in favor of the hereinafter named claimants in the following proportions:

(a) Abraham Silberberg, individually.....	11/80ths
(b) Abraham Silberberg, as executor of the Will of Elena Silberberg.....	11/80ths
(c) Virginia Martinez, widow of Felix Martinez.....	5/80ths
(d) Flora M. de Hernandez.....	5/80ths
(e) Reyes M. Henry.....	5/80ths
(f) Virginia Martinez, a feme sole.....	5/80ths
(g) Pearl L. Martinez, also known as Mary C. Martinez.....	5/80ths
(h) Isabel N. Martinez.....	5/80ths
(i) J. H. Duthie.....	6/80ths
(j) Lee H. Orndorff.....	11/80ths
(k) R. F. Miller.....	11/80ths

The above-named claimants shall share, in the above proportions, the aforesaid sum of \$192,555.00, as set forth hereinbelow in the award to them.

On February 15, 1945, El Tornillal Land Company, S. A. executed an allotment for the losses it sustained to claimant Southern Arizona Bank and Trust Company, in trust for Helen Cameron Briggs, as the sole beneficiary. Accordingly, the amount of \$84,547.50 is to be awarded to this claimant.

The Commission makes the following award:

To American stockholders of the International Investment Company, S. A., and American stockholders of El Tornillal Land Company, S. A., the principal sum of \$277,102.50 with interest, as provided in section 7 of the Act aforesaid, from September 19, 1939, to be paid as follows:

Abraham Silberberg, individually	\$26,476.31
Abraham Silberberg, as executor of the Will of Elena R. Silberberg	26,476.31
Virginia Martinez, widow of Felix Martinez	12,034.69
Flora M. de Hernandez	12,034.69
Reyes M. Henry	12,034.69
Virginia Martinez	12,034.69
Pearl L. Martinez, also known as Mary C. Martinez	12,034.69
Isabel N. Martinez	12,034.69
J. H. Duthie	14,441.62
Lee H. Orndorff	26,476.31
R. F. Miller	26,476.31
Southern Arizona Bank and Trust Company in trust for Helen Cameron Briggs, as the sole beneficiary	84,547.50

DECISION No. 58-E

AMC Docket No. 117. Claimants: Maria Denton Showley, Morgan G. Denton, and E. Gilbert Jaccard. Amount claimed: \$7,070.70. Amount awarded: \$3,991.90.

This claim is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942. It is predicated upon the expropriation of 1,900 hectares of land comprising a part of Jacume ranch in Lower California under a Governor's Decree dated July 21, 1939. Provisional possession was given on October 10, 1939. The Jacume ranch consisting of 2,500 hectares, was purchased by William Denton in 1877. Claimants herein derived title through him by devise and purchase of interests in said ranch as follows:

Maria Denton Showley	17/60ths
Morgan G. Showley	11/60ths
E. Gilbert Jaccard	11/60ths

The American nationality of said claimants is established.

The record contains very meager evidence concerning the value of the land. Taxes were paid on a fiscal value of 16 pesos per hectare. In the absence of more satisfactory evidence this is accepted as the basis of the award. The value of the 1,900 hectares expropriated at 16 pesos per hectare is 30,400 pesos. Converted at the rate of exchange prevailing at the date of expropriation (4.95 x 1), this is the equivalent of \$6,141.41.

Awards are accordingly made as follows:

To Maria Denton Showley	\$1,740.06
To Morgan G. Denton	1,125.92
To E. Gilbert Jaccard	1,125.92

together with interest from October 10, 1939, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 105-E

AMC Docket No. 118. Claimant: Fred A. Glaze, as Administrator of the Estates of John W. Glaze and of Carl L. Glaze. Amount claimed: \$9,700.00. Amount awarded: \$3,232.31.

Claimant asks indemnification for losses in the amount of \$9,700.00 for the alleged expropriation of land situated in the area known as the Blalock Colony in the State of Tamaulipas, Mexico. It is alleged that 320 hectares of land formerly belonging to John W. Glaze, now deceased, were expropriated causing a loss of \$5,860.00 and that an unspecified number of hectares of land formerly belonging to Carl L. Glaze were expropriated causing a loss of \$3,840.00.

When the claim was filed, Fred A. Glaze was administrator of both estates, but said administrator is now deceased. One Audrey Glaze has been appointed administratrix of the Estate of John W. Glaze, deceased. No information has been furnished as to the appointment of an administrator de bonis non of the Estate of Carl L. Glaze.

Evidence has been submitted to establish in a satisfactory manner the American nationality of the original property owners and their heirs at all times pertinent to the claim.

The Governor's Decree of expropriation, dated November 30, 1939, which dotated 567 hectares of land, specified that 128 hectares were in the name of Carl L. Glaze; that another portion thereof belonged to one Warner and that the owner of the balance of the land was unknown. The Presidential Decree of November 13, 1940, which confirmed the Governor's Decree, stated that of the 576 hectares of land dotated, 137.71.72 hectares were in the name of Carl L. Glaze. Both decrees recited that the taxes on the property were unpaid but the evidence discloses that taxes were in fact paid for each of the four quarters of the year of 1939. It appears that the agrarians took possession prior to the date of the Governor's Decree.

The difficulties of ascertaining the exact land expropriated and the owner thereof have been set forth in the Medlin claim (Decision No. 91, Series E). By reference to maps and plats of the property included in the Blalock Colony in accordance with the method used in the determination of the Medlin claim, the Commission finds that 192 hectares of land formerly owned by John W. Glaze, and 128 hectares of land formerly owned by Carl L. Glaze, have been expropriated.

The only evidence offered by claimant as to the classification and value of the property is contained in a Governor's Decree which classified and valued land which had been dotated over the entire state for the purpose of taxation on such lands. However, from evidence furnished in other claims for land in the same colony, we find that 50 pesos per hectare would be a fair and reasonable valuation of the land in question.

The Commission finds that the losses on the portion of the claim belonging to the Estate of John W. Glaze, deceased, namely, 192

hectares of land, should be computed at 50 pesos per hectare or a total of 9,600 pesos. This sum, converted into dollars at the rate of exchange prevailing on November 30, 1939 (4.95 x 1) amounts to \$1,939.39.

The Commission further finds that the losses sustained by the Estate of Carl L. Glaze, deceased, to wit, 128 hectares of land, should be computed at 50 pesos per hectare and amounts to 6,400 pesos. This sum, converted into dollars at the rate prevailing on November 30, 1939, (4.95 x 1) amounts to \$1,292.92.

The claimants herein are accordingly awarded such sums as follows:

To Audrey Glaze, Administratrix of the Estate of John W. Glaze, deceased, the sum of \$1,939.39 with interest from November 30, 1939.

To the Estate of Carl L. Glaze, the sum of \$1,292.92, with interest from November 30, 1939.

DECISION No. 15-E

AMC Docket No. 119. Claimant: Evangeline Springston Corliss. Amount claimed: \$15,677.00. Award: disallowed.

This claim is before the Commission under section 3 of the Settlement of Mexican Claims Act of 1942, the claimant having mailed to the Commission a letter, in the form of a detailed statement, signed by claimant and verified before a notary, making claim for loss of real and personal property in the amount of \$15,677.00.

The original letter of claimant stated that the depredations occurred at a date prior to January 1, 1927. The claim, therefore, would not come within the jurisdiction of this Commission. The question of jurisdiction being called to claimant's attention, a new letter was filed, also verified, alleging that the losses occurred, at least in part, during 1928, but claimant has ignored subsequent requests for supporting evidence.

No evidence, except the statement of claimant, has been submitted in support of the claim, but claimant presumably relies upon the evidence submitted in the claim of O. B. Springston, General Docket No. 252.

Claimant contends that the claim before the General Claims Commission was filed by her in her brother's name and that she subsequently endeavored to amend that claim but that the Mexican Consul at Seattle refused to consider such amendment. It is alleged that the property lost was actually owned by claimant and that the land lost was worth \$2,950.00 and that the personal property taken was valued at \$12,727.00, these losses being alleged to have been suffered in addition to the losses claimed by the brother in the claim filed with the General Claims Commission.

The evidence indicates that the property was jointly owned by O. B. Springston and his mother, Mrs. P. C. Springston; that the mother waived her interest therein in favor of her son; that said O. B. Springston was in legal possession of certain land, in which he had invested \$1,000.00; that the raiders had driven him therefrom and that he had lost crops and other personal property of the value of \$665.00; that all of the losses occurred at dates prior

to January 1, 1927. The total amount claimed as damages for the investment in the land as well as for the loss of the personal property was \$1,665.00.

The American Commissioner appointed under the General Claims Protocol of 1934 appraised the O. B. Springston claim (General Docket No. 252) at \$362.50 and the claimant therein was notified of the appraisal. Upon failure of the claimant either to accept or reject the appraisal this Commission, under section 4(c) of the Settlement of Mexican Claims Act of 1942, entered an award upon the basis thereof and certified the same to the Treasury Department on May 16, 1944.

The evidence before the General Claims Commissioner clearly indicates that all the property to which claimant before this Commission now claims title, is the same property which was the subject matter of the claim of her brother before the General Claims Commission and that said property was lost prior to January 1, 1927. The claim for the loss involved herein was, therefore, adjudicated by the certification of an award upon the basis of the appraisal in the claim before the General Claims Commission hereinbefore described. Moreover, it may be observed that this Commission could enter no award, had the aforementioned award not been so certified, since the loss upon which the claim is based, from the standpoint of time, lies outside the jurisdiction of this Commission.

This claim is, therefore, disallowed.

DECISION No. 98-E

AMC Docket No. 120. Claimant: Bertram Arthur Warner. Amount claimed: \$3,000.00. Amount awarded: \$742.66.

This claim, in the amount of \$3,000.00 is one of those involving land located in the Blalock Colony, State of Tamaulipas, Mexico, and is predicated upon the loss of 100 hectares of land alleged to have been expropriated by reason of two Presidential Decrees dated December 13, 1937, and November 30, 1939, respectively.

The Commission finds that the evidence filed with the Special Mexican Claims Commission (Docket No. 3059) by this claimant, is sufficient to establish his American nationality at all times pertinent to this claim. He has also established his ownership of the land involved in this claim, and that he has been such owner since 1910.

By the methods described in the Medlin Claim (Decision No. 91, Series E) the Commission finds that the "Tanalajos" expropriation decree dated November 30, 1939, an authenticated copy of which was filed in the Glaze Claim (AMC Docket No. 118), deprived the claimant of 64 hectares of land. This item of claim is within the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

The Commission further finds that the "La Roncha" expropriation decree dated December 13, 1937, expropriated 32 hectares of the claimant's land. Satisfactory evidence of this decree has been furnished in the Crabtree Claim (Agrarian Docket No. 155). Claimant's testimony is to the effect that he did not know of the decree at the time it was issued; that the decree was not pub-

lished; that the description in the decree did not identify the land or the owner thereof in such a manner as to indicate that claimant's lands were affected. For the reasons set forth in the Lamm claim (Decision No. 79, Series E) the Commission holds that this item of claim arose on June 10, 1940, within the meaning of the Settlement of Mexican Claims Act of 1942, when the claimant obtained knowledge of such expropriation. According to the testimony in the Medlin claim, *supra*, information as to the expropriations was imparted by the Mexican authorities on said date. This claim is therefore within the jurisdiction of this Commission under the provisions of section 3 (a) (3) of the Act.

The evidence as to the classification of land and as to the value of such land is not very satisfactory. However, consideration of this evidence along with the evidence in other claims for land in the same colony leads the Commission to conclude that a fair valuation of the loss sustained by claimant would be 50 pesos per hectare for the land taken under the Tanalajos expropriation decree of November 30, 1939, and 10 pesos per hectare for the land taken by the La Roncha expropriation decree of December 13, 1937.

The value of the land taken by the Tanalajos expropriation, 64 hectares at 50 pesos per hectare, would total 3,200 pesos. This converted into dollars at the rate of exchange prevailing on November 30, 1939 (4.95×1) would be \$652.52.

The value of the land taken by the La Roncha expropriation decree, 32 hectares at 10 pesos per hectare, amounts to 320 pesos. This sum, converted into dollars at the rate of exchange prevailing on December 13, 1937 (3.55×1) would amount to \$90.14.

The claimant herein, Bertram Arthur Warner, is accordingly awarded the principal sum of \$742.66, with interest from dates of expropriations, as provided in Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 99-E

AMC Docket No. 121. Claimant: Martha Shriber, as an individual and as Administratrix of the Estate of Peter F. Shriber, deceased. Amount claimed: \$1,500.00. Amount awarded: \$439.43.

This claim in the amount of \$1,500.00 is predicated upon the alleged expropriation of 50 hectares of land forming part of what was known as the Blalock Colony in Tamaulipas, Mexico, under the so-called "La Rancho" expropriation decree of December 13, 1937.

Claimant has referred us to the evidence filed with the Special Mexican Claims Commission. This establishes the American nationality of the claimant and her decedent at all times pertinent to this claim. It also establishes the ownership of the land involved in this claim.

The affidavits and other statements filed in this claim, variously estimate the area of the land expropriated as 50 hectares, 60 hectares and 96 hectares respectively. Following the methods described in the Medlin claim (Decision No. 91, Series E) the Commission finds that claimant suffered the loss of 52 hectares of land by reason of said decree.

For the reasons set forth in the Lamm claim (Decision No. 79,

Series E) and the Medlin claim, above mentioned, the Commission finds that this claim arose within the meaning of the Settlement of Mexican Claims Act of 1942, on June 10, 1940, when, it appears, members of the Blalock Colony were first informed of the expropriation.

From the evidence in this and other claims for land in the same colony, the Commission concludes that half of the land taken was tillable land, worth 50 pesos per hectare and that the balance of the land was pasture land, worth 10 pesos per hectare. 26 hectares at 50 pesos per hectare amounts to 1,300 pesos and 26 hectares at 10 pesos per hectare, amounts to 260 pesos, making a total loss to claimant of 1,560 pesos. This sum, converted into dollars at the rate of exchange prevailing on December 13, 1937, amounts to \$439.43.

The claimant herein, Martha Shriber, Administratrix of the Estate of Peter F. Shriber, deceased, is accordingly awarded the principal sum of \$439.43, with interest thereon according to the provisions of Section 7 of the Act from June 10, 1940 the date the claim accrued.

DECISION No. 22-E

AMC Docket No. 122. Claimant: John C. McConnell. Amount claimed: \$867.50. Award: disallowed.

This claim is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. In an affidavit of claimant filed with the Commission on June 19, 1944, it is stated that on May 4, 1912, claimant purchased for \$500.00 a tract of land situated in the District of Choapam, State of Oaxaca, evidenced by a deed conveying 40 acres, and that the Mexican Government confiscated said land in February 1932. Claim is therefore made for \$500.00 and interest thereon from February 1932 aggregating the sum of \$867.50.

There is evidence of the American citizenship of claimant and of his ownership of said land. However, although claimant has been called upon to do so, no evidence has been submitted in support of the allegations made herein with respect to the taking or expropriation of said land or as to any other action by the Government of Mexico in connection therewith giving rise to international responsibility in this case.

The claim is, therefore, disallowed.

DECISION No. 72-E

AMC Docket No. 123. Claimant: Ethel Bradshaw McCann. Amount claimed: \$82,642.94. Amount awarded: \$18,927.62.

This is an agrarian claim based upon the expropriation of 18,1741 hectares of land in the Federal District of Mexico under a Presidential Decree dated February 16, 1938, and published February 19, 1938. It was previously filed with the Agrarian Claims Commission. The land in question comprising a portion of the Tonalca ranch belonging to the claimant, was expropriated by a decree of the Governor dated January 28, 1937, and published March 9 and 24, 1937. Provisional possession was given thereunder on February 14, 1937. This expropriation was confirmed by the aforesaid Presidential Decree of February 16, 1938, which was published February 19, 1938. The claimant made

a protest against said expropriation to the Office of Small Properties. On January 31, 1940, the President of Mexico modified his original decree and ordered the return of said property to the claimant. Possession thereof was accordingly restored to claimant on February 28, 1941. The agrarians resorted to the courts against the action returning said property to claimant and on September 27, 1943, the Supreme Court of Mexico rendered a judgment holding that the Presidential Decree which attempted to modify the original Presidential Decree of expropriation was invalid. Pursuant to such decision, possession of said property was again given to the agrarians.

The claim as originally filed with the Agrarian Claims Commission was based upon said original expropriation for an amount of \$28,334.42. During the pendency of this claim in said commission and after the second Presidential Decree which restored possession of said land to her in February, 1941, claimant amended her claim for loss of the property to one for loss of use of the property for the period from February 14, 1937, the date when provisional possession was given to February 28, 1941. Claimant apprised the Agrarian Claims Commission at that time that she was awaiting decision in the legal proceedings instituted by the agrarians against the Presidential Decree which returned the property to the claimant. The claim in the amended form, as one solely for the loss of use, was appraised by Commissioner Lawson of the Agrarian Claims Commission in the amount of \$3,790.00. This was certified as an award of this Commission on October 11, 1943. (Agrarian Docket No. 121, Award No. 368).

In a decision rendered on September 27, 1943, the Supreme Court of Mexico upheld the expropriation under the Presidential Decree of February 16, 1938.

The Commission is without authority to consider this claim under the provisions of the Settlement of Mexican Claims Act of 1942, unless it shall be determined that the claim is before the Commission on a petition for review under section 4 of said Act. Examining the jurisdictional aspects of the claim thus posed, we find that claimant had duly filed with the Agrarian Claims Commission a claim for the property expropriated under the original Presidential Decree of February 16, 1938. When the President of Mexico made a new decree on January 31, 1940, restoring the property to claimant, the claim was properly amended by her to one for loss of use. The Agrarian Claims Commission was apprised at that time that the right of the President of Mexico to make the decree of January 31, 1940, was under attack in the Court by the agrarians. However, neither the claimant nor the Commissioner of the Agrarian Claims Commission could anticipate the ultimate decision of the Supreme Court upon the question involved and the Agrarian Claims Commission terminated its work before the final decision of the Supreme Court was rendered in 1943.

If the instant claim arose on September 27, 1943, the date when the Supreme Court rendered its final decision, it is, of course, one for adjudication by a future commission. We find, however, that the 1943 decision merely reaffirms the fact that

claimant had effectively lost her property under the original Presidential Decree of 1938, and clearly relates the loss of said property back to that date. It would therefore appear that the Government of Mexico if called upon in the future to respond in damages for this loss might plausibly maintain that its obligation was extinguished under the Convention of November 19, 1941, between the United States of America and Mexico. The *en bloc* settlement consummated by said Convention affected all agrarian claims arising between August 30, 1927, and October 7, 1940. Moreover, we see nothing in the aforesaid decision of the Supreme Court that would warrant the holding that it was so patently incorrect as to amount to a denial of justice.

It would therefore appear that if claimant is to be indemnified for her loss resulting from the expropriation of her land in 1938 she must bring herself within the purview of section 4 of the Act authorizing us to review the action taken on her claim by the Agrarian Claims Commission.

Section 4 provides that:

"... the Commission shall, if it determines to review such case, decide the case upon the basis of (1) the record before the Commissioner at the time his appraisal in such case was made . . . *Provided*, That the Commission may, in its discretion, receive and consider additional evidence with respect to any claim in which it is established to the satisfaction of the Commission that it was impossible for either the claimant or the attorney, despite the exercise of due diligence, to obtain and file such evidence within any period prescribed for such filing by or in accordance with the applicable agreements between the Government of the United States and the Government of Mexico, or by or in accordance with the applicable rules adopted pursuant to such agreements."

Examining, then, the record before the Agrarian Claims Commission, we find that the claim for the loss of the property had been duly filed, the evidence having included the Presidential Decree of expropriation, proof of claimant's American citizenship and a showing as to the value of the property expropriated. There are thus present all the essential elements of a claim, except the 1943 decision of the Supreme Court reaffirming the validity of the Presidential Decree of 1938. Claimant now submits such Supreme Court decision as a document which she obviously could not submit to the former Commission and which we are authorized to receive under the section of the Act above quoted.

We hold that this claim may equitably be construed to be a petition for review and that there is ample warrant for granting such petition. So holding, this claim becomes one for our determination on review. The liability of the Mexican Government having been established as a result of the expropriation of claimant's land under the decree of 1938, we are brought to the question of the extent and value of the expropriated land as of the date of the expropriation and the amount of the loss sustained by claimant.

In her affidavit of June 7, 1944, claimant makes claim for the expropriation of 18,1741 hectares. To this she adds an additional

.4090, .0645 and .1080 hectares, together with claim for damages for an artesian well and expenses. The Commission finds no support for items other than the admitted expropriation of 18.1741 hectares. Considering the evidence relating to value of the land, the Commission finds that the land had a value in 1938, when the original Presidential Expropriation occurred, of \$1,250.00 per hectare, or the sum of \$22,717.62 for the 18.1741 hectares. From this sum there is deducted \$3,790.00, the amount of the appraisal previously awarded.

Claimant is accordingly entitled to the award herein in the sum of \$18,927.62 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from February 16, 1938.

DECISION No. 36-E

AMC Docket No. 124. Claimant: Jasper and Martha E. Jones. Amount claimed: \$6,540.00. Award: disallowed.

This is an agrarian claim, in the amount of \$6,540.00, based upon the alleged expropriations of 218 hectares of land, located in the State of Tamaulipas, Mexico, under a Presidential Decree dated October 27, 1937, and published February 1, 1938. The claim was not filed with any previous commission.

Agrarian claims not previously filed, over which this Commission has jurisdiction, are described in paragraphs (1), (2) and (3) of section 3 (a) of the Settlement of Mexican Claims Act of 1942. Since it is clear that a claim of this character based upon a Presidential Decree made and published on the aforesaid dates does not come within any of the categories enumerated in said paragraphs, it follows that the Commission is without jurisdiction to pass upon the same.

It is, accordingly, ordered that this claim be disallowed for want of jurisdiction.

DECISION No. 69-E

AMC Docket No. 125. Claimants: H. W. Keller, Homer E. Sargent, Burton E. Green, Chandis Securities Company and Estate of W. L. Valentine. Amount claimed: \$101,475.00. Amount awarded: \$58,735.39.

This claim in the amount of \$101,475.00 is for deprivation of use of several tracts of land owned by Compania del Rancho de San Isidro, S. A., a Mexican corporation, comprising approximately 13,000 hectares, situated near Tiajuana, Lower California, Mexico, during the period from August 30, 1927, to October 6, 1940. It is alleged that the Mexican authorities settled agraristas upon this land and refused to remove them therefrom. The claim is composed of two items, one in the amount of \$83,475.00 for alleged loss of use and income, and the other in the amount of \$18,000.00 for alleged expenses incurred in caring for and preserving the property during the aforesaid period.

The corporation acquired this property between February 8, 1911 and September 12, 1914. Organized in Mexico in 1911 for a period of 50 years, the said Compania del Rancho de San Isidro, S. A. was capitalized for \$80,000.00, divided into 40 shares of a value of \$2,000.00 each. Only 29 shares were issued.

The claimants herein are American stockholders of said corporation. A claim on behalf of holders of 28 shares of this cor-

poration was presented to the General Claims Commission under Docket 1043, and was appraised by Commissioner Underwood in the amount of \$37,500.00 for loss of use prior to August 30, 1927, the limit of jurisdiction of the General Claims Commission. That appraisal was certified as an award by this Commission, pursuant to the provisions of section 4 (b) of the Settlement of Mexican Claims Act of 1942, on August 4, 1943. (Award No. 41)

The facts in the instant claim are basically the same and a continuation of those which constituted the former claim. The appraisal of Commissioner Underwood was made without prejudice to any claim arising after August 30, 1927.

Evidence has been furnished showing that these lands were settled by Mexican agrarians or squatters without due process of the Mexican Agrarian laws, and that the Mexican authorities refused or neglected to remove said settlers from the premises despite the protests and petitions of the said company. This condition continued from August 30, 1927, to October 6, 1940, the period within the jurisdiction of the Commission. The first settlements on this land appear to have been made in 1919, by the Department of Agriculture and Fomento. Upon protest of the company, the Mexican Government ordered the settlers to remove therefrom, but its authorities did not make the order effective.

In the circumstances, the Commission finds that the Mexican Government is liable for the losses suffered by claimants.

With respect to the evaluation of damages for loss of use of its land, evidence has been furnished showing that Compania del Rancho de San Isidro, S. A. is a non profit organization. A gun club, an adjunct of the San Isidro corporation, aforesaid, had used the land for hunting and as a vacation resort for its members. The dues collected from its members went toward the upkeep of the said property. It appears also that from 1924 to 1929, inclusive, the property was leased at the rate of \$2,000.00 per annum. Considering all the facts in the record and based upon an inspection of this property, the Commission concludes that the fair and just compensation for loss of use thereof is \$5,000.00 per annum for the period commencing August 31, 1927, to October 6, 1940, to wit, 13 years, 1 month and 7 days, or a total of \$65,512.55.

Compania del Rancho de San Isidro, S. A. executed an Allotment to the claimants herein on June 10, 1944. Originally 29 shares were issued, as aforesaid, one to each stockholder. Twenty-one of these shareholders executed assignments of their shares in 1944 to H. W. Keller, a claimant herein. He had previously owned one share, so that he is now the owner of 22 shares. Claimants Homer E. Sargent and Burton E. Green each own one share. Chandis Securities Company, another claimant, whose American nationality was recognized, owns one share which it acquired from one Harry Chandler. One share which had been held by the Estate of W. L. Valentine was distributed to claimant Edward R. Valentine, an American national, by Court decree in 1944. O. T. Johnson, Jr., and Charles Modini Wood, who were at one time holders of one share each, ceased to be such stockholders in 1931 and 1930, respectively. The remaining

share of stock was held by a claimant in the former claim. He was disqualified, however for failure to prove American nationality. The claimants above named who are properly before this Commission, are the owners and holders of 26 shares of stock of said corporation and the award herein is made to them for 26/29ths of the amount of losses, as above determined, payable to each in the proportion of his holdings.

The Commission accordingly makes the following award:

To H. W. Keller, Homer E. Sargent, Burton E. Green, Chandis Securities Company and Edward R. Valentine, the principal sum of \$58,735.39 with interest, as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from October 6, 1940, payable as follows:

H. W. Keller	\$49,699.19
Chandis Securities Company	2,259.05
Homer E. Sargent	2,259.05
Burton E. Green	2,259.05
Edward R. Valentine	2,259.05

DECISION No. 66-E

AMC Docket No. 126. Claimant: Frances M. Elkins, as Administratrix of the Estate of George M. Elkins. Amount claimed: \$26,625.00. Amount awarded: \$10,000.00.

This claim in the amount of \$26,625.00 is before the Commission pursuant to the provisions of section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942. It is based upon loss of live-stock and other personal property in the course of the so-called "Escobar" revolution during the spring of 1929. The history of this revolution and a statement of the principles of law applicable thereto are set forth in the decision of the Commission in the claim of *Jesse J. Simpson, et al.* (Series E, Decision 63). The Commission has determined that Mexico is not liable for the acts of rebel forces during the course of the "Escobar" revolution but that it is responsible under international law for the acts of the federal forces involved therein.

It is necessary, therefore, only to apply the foregoing principle to the facts in the present case. The nationality of the claimant and the ownership of cattle, horses and personal property is established. The evidence in the record shows that both rebel and federal forces crossed claimant's ranch during the course of the "Escobar" revolution. They killed livestock and horses and carried away personal property belonging to the claimant. Items of claim for these losses are formulated as follows:

500 Hereford cattle at \$50	\$25,000.00
30 saddle horses at \$10	300.00
1 ranch wagon	75.00
1 pack outfit	50.00
	26,625.00

The evidence as to the amount of damage inflicted by the federal and rebel forces, respectively, is conflicting and lacks definiteness. The difficulty of precise proof as to the allocation of the loss attributable, respectively, to acts of unsuccessful revolutionists and to those of federal troops is, however, recognized by the Commission. As above stated, the Government of Mexico is liable only for the damage committed by the federal forces. Upon a considera-

tion of the record the Commission is of the opinion that a fair estimate of the losses caused by federal forces is \$10,000.00.

Accordingly, an award is made to Frances M. Elkins, as Administratrix of the Estate of George M. Elkins, deceased, in the sum of \$10,000.00, with interest from June 1, 1929.

DECISION No. 116-E

AMC Docket No. 128. Claimant: Mrs. D. J. Heyser. Amount claimed: \$10,550.00. Amount awarded: \$1,555.77.

This claim in the amount of \$10,550.00 is before the Commission pursuant to the provisions of Section 4 (a) (2) of the Settlement of Mexican Claims Act of 1942, a claim having been filed with the Agrarian Claims Commission which it failed to appraise and a petition for review of such action having been granted.

The claim is predicated upon the expropriation of 80.93 hectares of land which claimant purchased from John L. Friedman and Francisco Marcovich out of a large tract known as "American Colony," situated in the Municipality of the City of Victoria, State of Tamaulipas, Mexico. The Governor's Decree was dated December 11, 1936, affected 656 hectares, expropriated to the poblado of "La Mariposa y Mahuiras," described as "lands of the American Colony belonging to Messrs. Marcovich and Friedman." This was the only decree of expropriation before the Agrarian Commission and from the contents thereof it could not be determined that the 80.93 hectares of claimant's lands were included in the said expropriation.

In the Presidential Decree, however, issued July 1, 1942, which confirmed the above-mentioned Governor's Decree and which was published in *Diario Oficial* of August 13, 1942, there is a description of the 656 hectares affected by the original expropriation from which description it would appear that the lands of claimant were included in the expropriated area. The Commission accepts the published copy of said Presidential Decree as newly discovered evidence which was not in existence during the life of the Agrarian Claims Commission and which could not therefore have been submitted in support of said claim before that Commission.

The nationality of claimant, her ownership of the property and the expropriation thereof are satisfactorily established.

The evidence establishes that 28 hectares of said land had at one time been cleared and planted to henequen and had a value of 150 pesos per hectare, or 4,200 pesos. The remaining 52.93 hectares of uncleared land are valued at 25 pesos per hectare, or 1,323 pesos. This makes a total of 5,523 pesos. Provisional possession was given on January 17, 1937. The rate of exchange on said date was 3.55×1 , and the above sum was equivalent to \$1,555.77.

An award to Mrs. D. J. Heyser, the claimant herein, is accordingly made in the sum of \$1,555.77 together with interest from January 17, 1937, as provided in Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 70-E

AMC Docket No. 129. Claimant: Robert E. Pirie. Amount claimed: \$1,608.97. Amount awarded: \$1,000.00.

This is a claim in the sum of \$1,608.97 for property loss and for personal injuries resulting from the failure of the Mexican Government to afford claimant adequate protection during the occurrences from November 4, 1927, to July 26, 1928, from which this claim arises.

Claimant, an American national, settled in the State of Durango, Mexico, in 1924, where he engaged in raising of livestock on his ranch, La Machilla, located in the southeastern part of that State.

The incidents complained of commenced on November 4, 1927, when nine head of claimant's cattle were stolen by rebels and were later seen in their possession. Although their return was assured by one General Jiminez of the Mexican Government, this did not materialize. On March 25 and 27, 1928, rebels stole claimant's property at his ranch and at the camp of the mining company at Vacas. On July 4th, a detachment of 18 Mexican troops arrived, but the colonel in charge, who was informed of the aforesaid occurrences, manifested no interest and left with his troops. On July 12th, three rebels came to claimant's ranch and demanded 2,200 pesos, later reducing the demand to 1,500 pesos. When this demand was not met, claimant was taken into the hills. He was released on July 13th, after payment to the rebels of 65 pesos and by promising an additional payment of 1,500 pesos in two weeks. On July 14th, claimant was forced to feed 8 armed rebels under their leader, Guadalupe Hernandez, at claimant's camp.

On July 16th, claimant went to the Governor at Durango City, and was informed that no guarantees for his safety could be given. On July 17th, claimant, at the Governor's suggestion, appealed to General Urbalejo. General Urbalejo stated that he had made repeated requests for more troops but that he could not assure protection because of a lack of sufficient troops. On July 26, 1928, claimant moved from his ranch to a safer place.

The evidence thus points to a deficiency in the protection of claimant by Mexico. Claimant suffered indignities and privation through the aforesaid raids and abduction. It appears that sufficient troops were sent to the scene of the depredations, but that they neglected the opportunities for apprehending the raiders, leaving claimant and his property unprotected and a prey to further raids.

This claim was originally submitted to the General Claims Commission (General Docket No. 3515), but Commissioner Underwood held it to be outside of his jurisdiction because the events in question occurred subsequent to August 30, 1927. He stated that

"There may have been some negligence in continuing to exert efforts to apprehend the guilty parties for a sufficient length of time but unfortunately for the claimant the present Commissioners are precluded from considering any acts which occurred subsequent to August 30, 1927."

After carefully considering and weighing all the evidence in the record, this Commission holds that Mexico is liable for the

damages suffered by claimant. In its opinion, the sum of \$1,000.00 would justly and adequately compensate claimant therefor.

Accordingly, claimant is awarded the principal sum of \$1,000.00 with interest as provided in section 7 of the Settlement of Mexican Claims Act of 1942, from July 26, 1928.

DECISION No. 126-E

AMC Docket No. 130. Claimant: Simon L. Ruskin. Amount claimed: \$3,580.00. Award: disallowed.

This claim in the amount of \$3,580.00 is based on the alleged default in the payment of the principal and interest of four bonds issued by the Veracruz & Pacific Railway Company, due July 1, 1934. It is alleged that the Veracruz & Pacific Railway Company was acquired by the National Railways of Mexico in 1910, and that the latter company was expropriated by the Mexican Government in 1927.

The American nationality of claimant and the ownership of the bonds are proved.

Claimant acquired said bonds on or about 1928 or 1929, at a cost of \$4,000.00. One of said bonds has been lost. He sold three of said bonds at the market on May 21, 1945, for a total price of \$420.00. He now claims the amount of \$3,580.00, the balance due on said bonds as a result of the nonpayment of same less the amount received on said sale.

It is alleged that the Mexican Government assumed responsibility for these bonds according to an Agreement for the readjustment of the Mexican Debt dated June 16, 1922.

Section 3 (a) (4) of the Settlement of Mexican Claims Act of 1942, excepts from the jurisdiction of the Commission the following category of claims:

"And (B) claims which were not filed with the General Claims Commission prior to August 31, 1927, and which are predicated upon default of payment of the principal or interest on bonds issued or guaranteed by the Government of Mexico;"

Since this claim was not filed with the General Claims Commission and is predicated upon default of payment of the principal of bonds guaranteed by the Government of Mexico, it is not within the jurisdiction of the Commission and accordingly is disallowed, without prejudice.

DECISION No. 37-E

AMC Docket No. 131. Claimant: Earl F. Salisbury. Amount claimed: \$16,030.32. Award: disallowed.

This is an agrarian claim, in the amount of \$16,030.32, based upon the alleged expropriation of a hacienda belonging to claimant, situated in the State of Nuevo Leon, Mexico, under a Presidential Decree dated August 25, 1937, and published December 4, 1937. Claimant owned a one-half interest in the corporation Jose Sepulveda y Cia., S.C.P., which in turn had title to the expropriated area. The claim was not filed with any previous commission.

Agrarian claims not previously filed, over which this Commission has jurisdiction, are described in paragraphs (1), (2) and (3) of section 3 (a) of the Settlement of Mexican Claims

Act of 1942. Since it is clear that a claim of this character based upon a Presidential Decree made and published on said dates does not come within any of the categories enumerated in said paragraphs, it follows that the Commission is without jurisdiction to pass upon the same.

It is, accordingly, ordered that this claim be disallowed for want of jurisdiction.

DECISION No. 47-E

AMC Docket No. 132. Claimant: D. M. Slonecker. Amount claimed: Not stated. Amount awarded: \$3,181.82.

This claim for an unstated amount is before the Commission pursuant to the provisions of section 3 (a) (3) of the Settlement of Mexican Claims Act of 1942.

The claim is predicated upon the expropriation of 225 hectares of land out of Porcion 10, Municipality of Altamira, State of Tamaulipas, Mexico, by a Gubernatorial resolution, dated November 29, 1939. Provisional possession was delivered to inhabitants of the town of Lazaro Cardenas, formerly known as El Mezquite, on January 19, 1940. The nationality of the claimant and the ownership of the land are established.

Upon consideration of all the evidence bearing on the question of the value of the land, the Commission is of the opinion that at the time of the expropriation the land had a value of 70 pesos per hectare, or a total value of 15,750 pesos. At the rate of exchange then prevailing ($\$4.95 \times 1$), this amounts to \$3,181.82.

An award is accordingly made to D. M. Slonecker for the sum of \$3,181.82, together with interest from January 19, 1940, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 101-E

AMC Docket No. 133. Claimant: Helen C. Mansfield, Administratrix with the Will Annexed of the Estate of William H. Mansfield, Deceased. Amount claimed: \$70,714.40. Award: disallowed.

This is an agrarian claim predicated upon two decrees of expropriation affecting two tracts of land located in the District of Guerrero, State of Chihuahua, Mexico. These tracts were known as Rancho El Pajarito and Rancho El Tarin, respectively.

A provisional decree of expropriation of 4,368 hectares from Rancho El Pajarito to the village of Temosachic was issued by the Governor of Chihuahua on August 19, 1931, and was published in the Periodico Oficial on August 29, 1931. No Presidential Decree relating to said provisional decree has been submitted.

A provisional decree of expropriation of 1,009 hectares from Rancho El Tarin to the village of Cocomorachic, Municipality of Temosachic was issued by the Governor on February 25, 1930. This decree was published in Periodico Oficial of April 5, 1930. However, the Presidential Decree of May 29, 1931, which was published in Periodico Oficial of July 2, 1932, amended the provisional decree so that none of the land of El Tarin was affected. The land expropriated to the village of Cocomorachic, by the Presidential Decree, consisted solely of 8,200 hectares of public lands (terrenos de propiedad nacional).

This Commission is granted jurisdiction over agrarian claims

by the provisions of section 3 (a) (1), (2) and (3) of the Settlement of Mexican Claims Act of 1942, which read as follows:

"SEC. 3. (a) The Commission shall have authority to examine and render final decisions in the following categories of claims on behalf of American nationals against the Government of Mexico—

"(1) Agrarian claims which arose between January 1, 1927, and August 30, 1927, inclusive, and which were not filed with the General Claims Commission established pursuant to the Convention between the United States and Mexico signed September 8, 1923 (43 Stat. 1730);

"(2) Agrarian claims which are predicated upon provisional expropriation decrees signed between August 31, 1927, and December 1, 1938, inclusive, but not published prior to December 1, 1938, and which were not filed with the Agrarian Claims Commission established pursuant to the agreement between the United States and Mexico effected by exchange of notes signed on November 9 and November 12, 1938, respectively (hereinafter referred to as the Agrarian Claims Agreement of 1938);

"(3) Agrarian claims which arose between December 1, 1938, and October 6, 1940, inclusive, and which were not filed with the Agrarian Claims Commission on or before July 31, 1939;"

It is apparent that none of the above expropriations comes within the provisions of Section 3 (a) (1), (2) and (3) above quoted.

This Commission is also given jurisdiction by the terms of Section 4 (a) (2) of the Settlement of Mexican Claims Act of 1942 to review decisions in those cases in which appraisals were made by the Commissioner designated by the United States pursuant to the Agrarian Claims Agreement of 1938, between Mexico and the United States. An attempt to file this claim with the Agrarian Claims Commission was made on August 1, 1939, but that Commission held that the claim had not been filed within the final date for filing of claims with that Commission, to wit, July 31, 1939, and that, consequently, said Commission was without authority to entertain said claim. The attempted filing was thus rejected. The holding of that Commission as to the date of the attempted filing appears to be fully supported by the evidence in the record. In the circumstances this Commission is without jurisdiction over this claim under Section 4 (a) (2) of the Settlement of Mexican Claims Act of 1942.

For the reasons above stated, the claim is dismissed.

DECISION No. 119-E

AMC Docket No. 134. Claimant: Pedro L. Green. Amount claimed: \$27,800.00. Amount awarded: \$1,600.03.

This is a claim in the amount of \$27,800.00 and is predicated upon a Presidential Decree of expropriation dated September 13, 1939, which granted dotation of 3,189 hectares of land on a petition for ejidos. Included in such area was the San Juan Hacienda stated in said decree to contain 210 hectares of land, and the

Buenavista Hacienda stated in said decree to contain 106 hectares of land. Both haciendas, located in the Municipality of Cardenas, State of Tabasco, Mexico, were owned by claimant, being acquired by purchase in 1893 and 1912, respectively. The ownership of such properties has been satisfactorily established by the record.

The title deeds furnished by claimant conveyed a total of 308.29 hectares of land in the two tracts and not a total of 316 hectares of land as described in the Presidential Decree above mentioned. In the absence of any contention by claimant that the decree more correctly described the area than the deeds submitted by claimant, the Commission finds that claimant has lost the amount of land described in the deeds, or 308.29 hectares of land.

The claimant, who was born in Mexico, furnished evidence to the Special Mexican Claims Commission (Docket No. 2977, Decision No. 947) establishing his American nationality. Such evidence is deemed satisfactory to establish citizenship before this Commission.

As to the value of the land, claimant has made his own estimates; making one to the American Consul in 1937 and another in 1945 to this Commission. There is no evidence either as to the productivity of the properties or as to any return therefrom. The dates of the purchase of the property by claimant are so remote that the respective amounts paid for the property at said times carry little evidentiary weight as to the value of the property in 1939, when it was lost to the claimant.

Only one other claim for losses based on the expropriation of land in the State of Tabasco has been filed before this Commission. No claim involving lands in said State was filed before the Agrarian Claims Commission. In the absence of more satisfactory evidence as to value, it is deemed appropriate to follow the valuation, found by this Commission in the said agrarian claim involving land in said state, (Tabasco Plantation Company, Decision No. 2, Series E). Such valuation is \$5.19 (United States currency) per hectare, or \$1,600.03 for the 308.29 hectares of land.

The claimant herein, Pedro L. Green, is accordingly awarded the principal sum of \$1,600.03, with interest thereon from September 13, 1939, according to the provisions of Section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 115-E

AMC Docket No. 135. Claimant: Pleasant E. Crabtree. Amount claimed: \$1,500.00. Amount awarded: \$646.46.

This is a claim asking for indemnification in the sum of \$1,500.00 alleged to be the value of 64 hectares of land taken from claimant by a Presidential Decree dated August 24, 1940. The land taken was in addition to that previously expropriated from claimant's holdings in what is known as the Blalock Colony, State of Tamaulipas, Mexico, and for which an award was made heretofore (Decision No. 44, Series C).

The ownership of the property and the nationality of the claimant at all times pertinent to this claim are satisfactorily established in the previous claim above mentioned.

Claimant herein has furnished no additional evidence as to value of the property except a Governor's Decree setting values

of communal land for tax purposes over the entire State. It is not satisfactory evidence as to valuation for the purposes of this Commission.

Considering the evidence in the previous claim, and the fact that an allowance of severance damage was made in such claim for the remaining property, also the evidence submitted in other claims affecting land in the same vicinity, the Commission considers that a just and reasonable valuation of the land in this claim would be 50 pesos per hectare. At that rate, the valuation for the expropriated property would be 3,200 pesos, which converted into dollars at the rate of exchange prevailing on August 24, 1940 (4.95 x 1) would amount to \$646.46.

The attorney of record, George A. Nugent, has requested that the Commission fix his attorneys fees in this claim, and asks that such allowance be 25 per cent of the award. He bases such request upon an agreement as to fees with claimant. Considering the entire record, the Commission finds that such an allowance is reasonable for the services rendered by him as attorney.

The claimant is, therefore, awarded the principal sum of \$646.46, with interest thereon as provided in Section 7 of the Settlement of Mexican Claims Act of 1942, from August 24, 1940, said amount to be apportioned as follows:

To Pleasant E. Crabtree.....	\$484.85
To George A. Nugent	161.61

DECISION No. 118-E

AMC Docket No. 136. Claimant: W. Jefferson Davis, et al. Amount claimed: \$7,801.15. Award: disallowed.

This is a claim for the value of an interest in 181.79 acres of land located in Ensenada, Lower California. It is alleged that the land was sold by the claimants' predecessors who retained a vendor's lien, to which the present claimants have succeeded; that the grantee who subsequently constructed the Hotel Playa de Ensenada thereon was so interfered with in the use of said property by the Mexican authorities that he was obliged to abandon the same and that by reason of such enforced abandonment he did not pay the balance of the purchase price secured by the alleged vendor's lien. This claim was previously presented to this Commission in the case of W. Jefferson Davis and Isaac Pacht, AMC Docket No. 20, Decision No. 9, Series E. In that decision this Commission stated:

"It should be noted that although the claim before us is for 18,637.76 acres, as above noted, the Hotel Playa de Ensenada Tract (181.79 acres) has been improperly included in this claim. Said tract was sold in 1927 by claimants' predecessor. Claimant alleges that part of the purchase price remains unpaid and makes claim therefor. We find no basis for an award for said claim."

The claimants were furnished with a copy of said decision and given a period of 30 days to file a petition for reconsideration. No such petition was filed and the decision was certified to the Treasury. The claim has thus been presented to this Commission and been disallowed. The disallowance is *res judicata* on the

merits of the claim and therefore the present claim cannot be maintained.

Furthermore, there is nothing in the evidence now presented which would call for a different determination than that heretofore reached.

DECISION No. 127-E

AMC Docket No. 137. Claimant: Mexican Agricultural Land Company. Amount claimed: \$275,000.00. Award: disallowed.

The claimant herein, an American corporation, has asked an award of \$275,000.00 predicated upon the loss sustained by reason of three expropriations of land taking a total of 4,797.5 hectares of land and for severance damage on the remainder of the company's holdings. The decrees are as follows:

1. Presidential Decree of June 9, 1937, published July 10, 1937, expropriating 1,752 hectares of land.

2. Presidential Decree dated June 16, 1937, published June 20, 1937, expropriating 782 hectares of land.

3. Governor's Decree of January 22, 1941, published February, 1941, executed August 17, 1941.

It is alleged that in 1904 the company acquired some 23,472 hectares of land known as the Agua Fria tract situated in the District of Tuxtepec, State of Oaxaca, Mexico for \$146,057.50. No evidence is furnished to support said claim as to the purchase price.

Although claimant is named as the owner of the land in the expropriation decrees, there is no evidence to establish that fact. There is some evidence that the claimant once owned the land in question and, presumably, was engaged in sub-dividing the land and selling various tracts to Americans. Some sales were made, but how many or in what amounts is not clear.

Correspondence with the State Department by claimant's representatives indicates that some portions of claimant's original tract were sold to at least 14 different individuals, some of whom filed agrarian claims in their own behalf. At least two of them were granted awards for losses sustained by reason of one of the expropriation decrees to which this claimant has attributed losses sustained herein. (Alvin C. Grate, Agr. Dkt. No. 135 and Christian J. Stahly, Agr. Dkt. No. 114)

Moreover, any claim for loss sustained by reason of the decree listed as No. 3, above, is not cognizable by us, our jurisdiction being limited to claims accruing prior to October 6, 1940.

In view of the record and the uncertainty as to what parts of the land had been sold and the location of such tracts and of the expropriated portions, it is impossible for this Commission to determine what portion of the alleged loss was sustained by the claimant and what portion was sustained by claimant's grantees.

For the reasons hereinbefore mentioned, the claim is hereby disallowed.

DECISION No. 129-E

AMC Docket No. 138. Claimants: R. L. Dineley, J. Myrick, Jerome A. Bassity, Charles Dunnevant, Arthur McDevitt, J. M. Hale, A. Henderson and W. W. Finn. Amount claimed: \$1,000,000.00. Amount awarded: \$99,950.00.

The claimants herein as the sole stockholders of Zaragosa Investment Company, S. A., a Mexican corporation allege that the company owned some 600 acres of land which was seized by Mexican authorities without any compensation being paid therefor resulting in a loss to claimants of \$1,000,000.00. The land was situated immediately adjoining the town of Tijuana, Lower California, Mexico.

It has been satisfactorily established that the claimant owned the entire stock of the company, to wit: 50,000 shares in the following proportions:

	<i>Shares</i>
Charles Dunnevant	5
Arthur McDevitt	5
J. M. Hale	5
A. Henderson	5
W. W. Finn	5
J. Myrick	17,490
R. L. Dineley	10,826
Jerome A. Bassity	21,659

Although it is alleged that all said claimants were citizens of the United States, there is not sufficient evidence to establish the nationality of Charles Dunnevant, Arthur McDevitt, J. M. Hale, A. Henderson and W. W. Finn. The evidence does establish the American nationality of J. Myrick, R. L. Dineley and Jerome A. Bassity.

Title documents submitted establish the ownership of only approximately 400 acres. This property was acquired by the company at various times in 1908 and prior thereto. It was included in the old Tijuana ranch which was the subject of a grant of land to one Santiago Arguello in 1829. While claimants' ownership is disputed by the claimants in another claim before this Commission (AMC Docket No. 87), the title documents and other evidence, nevertheless, indicate that the predecessors in interest of the Zaragosa Investment Company, S. A. acquired title thereto by deeds, some being dated as early as 1895, from heirs of the Arguello family. These heirs recited in the said deeds that they claimed sole ownership of the property by virtue of a certain partition deed in 1890, which deed had been approved by the Mexican courts. Moreover, under Mexican law, those in possession of the land may obtain title by prescription in 20 years, if their actions are in good faith. Since claimants herein occupied the land, placed improvements thereon, granted a right-of-way to a railroad, obtained a concession to conduct race-meetings on such land, advertised such meetings, had large crowds in attendance and paid taxes on such property, it would appear that their possession was open, notorious and undisputed. The Commission, on the record in both claims, finds that the Zaragosa Investment Company, S. A. had title to the tract of approximately 400 acres of land in question.

It is alleged by claimants that they paid some \$80,000.00 for the land; that they built a race-track, riding rings, exercise tracks, stables, a grandstand and other improvements on the property at a cost of some \$285,000.00. The evidence as to such investments is, however, not very convincing.

It appears that on January 10, 1919, the President of Mexico issued a decree declaring that the property flooded by the Tijuana River and ten meters on each side thereof, was actually within the Federal Zone, presumably on the theory that the stream was a navigable river. An amparo suit filed by the Zaragosa Company in which the issue was raised resulted in a decision adverse to the company, although the question of the constitutionality of the decree was specifically not decided. There is no record of any other attempt by the company to recover the property. It would appear, therefore, that a portion of the property had thus been lost to claimant in 1919. Such loss is not within the jurisdiction of this Commission.

It is alleged, and the evidence tends to establish, that in July, 1929, certain armed Mexicans, in uniform, being either police or army personnel, forcibly drove claimants from the property and on their return at a later date, again drove them out and threatened them with violence if they returned. There is corroborating evidence that such ejection took place, although the date is not definitely fixed.

In November, 1929, a decree of the President declared that the entire Tijuana grant, which included claimants' property, was void. The Mexican Supreme Court in 1938 declared void the said nullification decree of 1929. A Presidential Decree dated April 26, 1940, based on the right of eminent domain, declared a tract of land including the land in question to be a part of the town of Tijuana. There was never any return to the owners of the property involved herein. After the original seizure of the land, the Mexican authorities destroyed the grandstand and other improvements and used some of the buildings for governmental purposes. The international gateway and the Mexican Customs House now rest upon such land.

Since no compensation has ever been paid for the property thus lost by the Zaragosa Investment Company, S. A., it is clear that claimants are entitled to compensation therefor, to the extent of their interest therein.

From the evidence adduced as to value and a personal inspection of the property, the Commission determines that, after excluding from consideration the portion lost in 1919, the value of the remaining property at the time of the divestiture of title was \$100,000.00. After deducting therefrom the proportionate share represented by the 25 shares of stock hereinbefore mentioned and which has not been established as American owned, there is left the sum of \$99,950.00.

Claimants herein are, accordingly, awarded the principal sum of \$99,950.00 which sum is divided according to the stock ownership as follows:

To J. Myrick or his estate	\$34,980.00
To R. L. Dineley	21,652.00
To Jerome A. Bassity or his estate	43,318.00

Such sums are to bear interest from April 26, 1940, according to the provisions of section 7 of the Settlement of Mexican Claims Act of 1942.

DECISION No. 128-E

AMC Docket No. 139. Claimant: Margaret Geist Gentry. Amount claimed: Not stated. Amount awarded: \$16,740.00.

Claimant asks compensation for a loss sustained by her as represented by her interest in La Union en Cuale, S. A., a Mexican corporation. This company had title to a large tract of land in Jalisco, Mexico. The losses alleged are expropriation of 4,650 hectares of such land by reason of a Presidential Decree dated March 27, 1940, and damages incidental to such expropriation.

Claimant herein has established her American nationality and has furnished satisfactory evidence of her interest in this claim as the sole heir of her father, the late A. W. Geist, Jr., who had presented another claim involving other land in the same tract before the General Claims Commission (Gen. Dkt. No. 592, Agency No. 2278). The appraisal of the American Commissioner therein was reviewed by this Commission which determined that the original claimant had established his American nationality and his interest in the expropriated property, and that he had a 45% interest in the losses sustained by the company having title to the land. We made an award in said claim under Decision No. 10, Series C.

The Presidential Decree of March 27, 1940, involved in the instant claim, which was published in the Diario Oficial on August 16, 1940, expropriated 4,650 hectares of land owned by said La Union en Cuale, S. A. Such expropriation is within the jurisdiction of this Commission.

Claimant has furnished no independent evidence as to the value or classification of the land affected by such decree. The decree indicates that the land taken was hilly pasture land, and that twenty percent thereof was suitable for cultivation. In the absence of other evidence, such classification will be accepted by this Commission.

Inasmuch as the lands involved in this claim are part of the same tract for which we made an award under our said Decision No. 10, Series C, we deem it appropriate to adhere to the evaluation of the lands made therein. The values established in the decision above mentioned, insofar as they apply to the classification of the land involved in this claim, were \$20.00 per hectare for hilly pasture land suitable for cultivation and \$5.00 per hectare for hilly pasture land. Although claimant has stated that the hilly land carried timber of value, no proof as to the extent or value of such timber has been furnished.

Based on such valuations, the Commission finds that the loss sustained by La Union en Cuale, S. A., by reason of the expropriation may be fairly assessed as follows:

930 hectares hilly land suitable for cultivation at \$20 per hectare..	\$18,600.00
3,720 hectares hilly pasture land at \$5 per hectare.....	18,600.00
	37,200.00

Claimant having established that she is the owner of 45% of the assets of the company holding title to the land, her proportion of the said valuation amounts to \$16,740.00.

Claimant alleges that the taking of said land, in addition to that

previously expropriated, rendered the remaining land still owned by the corporation as of little value. The proof fails to establish this item of loss and the same is therefore disallowed.

The claimant herein, Margaret Geist Gentry, is accordingly awarded the principal sum of \$16,740.00, with interest thereon from March 27, 1940, as provided in section 7 of the Settlement of Mexican Claims Act of 1942.

ALPHABETICAL LIST OF INDIVIDUAL CLAIMANTS

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